STATE BANKS

SINCE THE PASSAGE

OF THE NATIONAL BANK ACT

DISSERTATION

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--BY--

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PREFACE.

There are in the United States three kinds of banks of discount and deposit; viz., national banks, state banks, and private banks. During the past fifteen years, there has been a rapid increase in the relative importance of state banks. The growth of these institutions has been at the expense of both the other classes. This paper is an attempt to analyze the legal and economic bases of this movement. It was hoped that such a study might throw some light on the vexed problem of the reform of the national bank act. There is presented here only the legal side. Recent amendments of the national act have made it desirable that some time shall elapse in order that their effect may be estimated, before final conclusions shall be reached on several matters treated in the remaining--economic--part.

Throughout my work, I have received constant and valuable suggestions from Dr. Sidney Sherwood, to whom I desire to return my thanks.

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STATE BANKING, 1864 - 1800.

Introduction.

In 1860, there were in the United States, 1562 state banks.(1) Under the influence of the national banking act, hastened in its effect by the ten per cent tax on state bank currency, by 1868, the number had fallen to 247. Corresponding to this de-

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1. There are not many terms which have been used in as many different senses as "state bank." In early days, the "state banks" were those in which the states owned a share, and which sometimes had a monopoly of note issue. In the Middle West, the "state banks" were single banks,--one for each state, operating with branches under a joint responsibility for note issue, as distinguished from the "free banks," issuing notes on the deposit of bonds. Whatever the variance in meaning, such banks had always one characteristic,--they were incorporated under state law, and the term came to be applied indiscriminately to all such institutions. "A state bank," says Morse, "is one organized under a state law, or a charter granted by the legislature of a state, and derives its power from state sovereignty." (Morse on Banks and Banking, 3rd ed., sec. 16). In recent years, the "state banks" have sometimes been confused with private banks; this has arisen generally from the fact that in some states, the same requirements are made of both classes, and since the state imposes equal restrictions, the practice has arisen of calling all such banks "state banks." A private bank is one, however, which is not incorporated. The definition given in the Kentucky laws correctly represents present usage. "Private bankers," runs the law, "are those who, without being incorporated, carry on the business of banking." (Laws of Kentucky, 1893, ch. 171, sec. 32). It is important to differentiate the two classes, since the fact of incorporation gives rise to important characteristics. A failure to do this has sometimes caused erroneous statements, and made it difficult to gather accurate statistical information. See below, page 79.

In this paper, by "state bank" will not be meant, however, every company organized under state law for banking purposes. Loan and trust companies and stock savings banks are capitalized corporations erected by state law. It is only with banks

cline in numbers, was the cessation of all legislation on the subject. The state banking systems became moribund; the old laws regulating banks of issue were generally swept away by revisions, or remained unchanged on the statute books.

The antebellum laws had been aimed solely at securing the safety of the bank note; the depositor was regarded as amply able to care for himself, just as the bank note holder had been considered earlier when note issuing was a right at the common law. It is true that the depositor was incidentally protected by many of the regulations under which banks were placed, but this was purely incidental to the main purpose of the laws. In fact, by giving the note holder a prior lien on assets, the depositor's security was somewhat impaired. So far as the interest of the depositor was concerned, the laws made no effort at regulation.

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of discount and deposit that this paper deals. It is to be admitted that in many states stock savings banks and loan and trust companies are included in "state banks" in popular and even official speech, but there seems a growing disposition to classify these separately, and to restrict the use of the term "state bank" to banks only of discount and deposit. Further justification of this use may be found in the fact that nine-tenths of the banks incorporated under state law are of this nature, and it seems permissible to use the term, without qualification, to express the most numerous class. "State banks" then, as the expression is used hereafter, are banks of discount and deposit (as distinguished from savings and loan and trust companies), incorporated under state law (in distinction from private banks, which are unincorporated, and national banks, which are formed under the national law).

The feeling that note issue alone needed governmental oversight persisted for a considerable time after 1865. The national banks had a monopoly of bank circulation, and there was thought to be no need of state regulation, since the only reason for it was taken away. As the importance of note issue decreased, and the deposit function became prominent, it began to be apparent that government oversight of banks was of value in protecting depositors. It is a far cry from the Michigan bank act of 1857 to that of 1887, but the national banking law has undergone the same transformation in its point of view. The Comptroller of the Currency, in his report for 1898, speaking of proposed reforms in the national banking act, says, "In their present form, they seem to ignore the interests of bank depositors with whose protection the Comptroller is peculiarly charged," and again, "it is the belief of the Comptroller that the proposed preference of the note holder over the depositor.. ...is not only inherently wrong and unjustified by any grounds of public policy."[1] And yet, the very law by which his office is created recognizes the right of the note holder, and his title indicates the view held of his office when it was established.[2]

1. Report of the Comptroller of the Currency, 1898, page XII.
2. It is not intended, of course, to express any opinion of the correctness of this view. It is simply pointed out that the present view of the aim of the national banking acts varies widely from that held when it was enacted.

For a considerable period the legislatures left the state banks free to make their own way. In some states, old laws unrepealed and designed to fit the needs of banks of issue, somewhat hampered their growth, but in the main, it was left with no interference. So late as 1892, Mr. Stimson says, "It seems unnecessary to incorporate the state banking laws in this edition. Nearly all the states, except the newer states and territories, have special chapters in their corporation acts concerning banks and moneyed institutions, but these chapters are usually of old date, and have practically been superseded for so long a time by the national banking laws that they have become obsolete in use and form."[1] A more careful examination would have shown a decided movement in the few years preceding 1892. Since that time, legislation has been abundant. There are very few states which have failed, in the last ten years, to do something in the way of enacting banking laws, and since the right of issue is taken away, the purpose of these laws has uniformly been the better protection of the depositors.[2]

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1. Stimson American Statute Law, Vol II sec. 9500, page 572.

2. It is of interest to note that in two states at least the question has recently been raised whether deposits cannot be secured by a guarantee fund. Just as in the case of note issue, there has been a transference of credit from the individual bank to the wider credit of a series of united banks, so it is thought if the security of deposits can be based on the credit of many institutions, a larger number of depositors will be secured. It would be an interesting experiment, but there

At present, the body of state banking laws is large in bulk and important in practice. It is this legislation, its growth and characteristics, its causes and purposes which it is the aim of the present paper to describe. In another part, an attempt will be made to interpret the economic side of the movement, which can only be right understood in the light of its legal environment.

In the evolution of the state banking laws, four elements have actively entered. While each has acted continuously, their influence has not been equal at all times.

(1) The national banking act has, especially in the earlier

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grave doubts as to its success. There seems, despite their fundamental similarity, a substantial difference in the parts which credit plays in the bank note and in the deposit. The tendency of modern legislation is to make bank money equivalent to specie, so far as credit is concerned, by resting it either on the credit of one large state institution, or else on the joint liability of a number of banks. It seems probable, on the other hand, that individual credit is still of considerable importance in the matter of deposits, and that it is a safeguard. A depositor does not place his money in a bank, as a general rule, simply because it is a state or national bank, but because he knows something of that particular bank. It may be admitted that the system acquires relatively more and more importance as regulation progresses, and it is quite conceivable that deposits may some day be made on the basis of the credit of the system. There is a high degree of probability that many deposits are so made at present, but the number made on individual credit, or to be more exact, not made because of lack of credit, is large enough to afford an important check on bankers. To guarantee deposits would result in giving the banker who is reckless a freer rein since public opinion would no longer be feared.

stages, been the model, to which the states have conformed their laws. It represented the only body of legislation on the subject, which was well known to the people. With its provisions, restrictions, and methods of operation, they were well acquainted, and it was natural that when the states adopted the policy of regulating banks of discount and deposits, they should follow closely its general plan.

(2) It was found, however, that the great majority of the state banks were the product of economic needs which the national banks did not satisfy, and it was necessary to make such changes in the national act as would suit it to these conditions.

(3) In the states, there already existed a great mass of laws regarding corporations in general. There has been a disposition, while conforming ~~this~~ legislation in many ways to the principles of the national bank act, in other particulars not to make such radical innovations in it as the adoption of that act in its entirety would have required. In some important respects, the influence of the previously existing corporation law has been paramount, while in others, it has yielded more or less fully.

(4) Recently there has grown up a strong interstate influence. States about to legislate on the subject look to other

states where similar economic conditions prevail, and where experience has already been had. The laws of Kansas are in some ways largely affected by the older legislation in Missouri, and Oklahoma has adopted the methods of Kansas. There has thus grown up what was so valuable in improving banking systems before the Civil War, a mutual helpfulness between the states. Not a few important improvements, adopted by one state and found to work well in practice, have been borrowed by others. This movement is as yet in its infancy, but it promises well. It may be said that at present in the systems which have been longer established, the influence of the laws of other states is far more important than any other. The national bank act has been already utilized as far as circumstances seem to allow, and in solving the remaining problems, nothing is so valuable as the experience of other states working under like conditions for a similar end.

INCORPORATION.

The power to charter banking, as well as other corporations, is inherent in the Legislatures of the various states, and is limited only by constitutional provisions. At some periods, prohibitions of charters for banking purposes have been numerous in the state constitutions, but at the present time, in only one state is the Legislature so restrained. The Texas Constitution of 1876, which is still in force, provides that "No corporate body shall hereafter be created, renewed, or extended with banking or discounting privileges."[1]

While Texas is unique among the states in its absolute prohibition of state banks,[2] there are in many of the state constitutions, provisions regulating the manner in which the Legislature may exercise its prerogative.

In the twenty years prior to the Civil War, the principle of the referendum was applied to banking charters in nearly all

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1. Constitution of Texas, 1876, Art.VII, Sec.30. The policy of Texas has, from the beginning of its history as a state, been almost invariably opposed to banking corporations. The constitutions of 1845, 1861, and 1866 contain the clause cited above. The constitution of 1868 did not prohibit bank charters, and a small number were granted during the period 1868 - 1876.

2. It has sometimes been stated that Oregon was to be placed with Texas in this respect, and Art.XI, Sec.1 of its Constitution seems capable of this construction, but the Supreme Court of Oregon, in the case of State ex rel. Hibernian Savings Bank, 8 Or. 396, after an examination of the Journal of the Constitutional Convention, held that only banks of issue were prohibited thereby.

the states of the Middle West. Iowa, Wisconsin, Illinois, Michigan, Ohio, and Kansas, in quick succession, inserted in their constitutions provisions requiring banking laws to be submitted to popular vote for ratification.[1] Since 1860, the same safeguard has been adopted in Missouri,[2] so that, at the present time, it may be found in the constitutions of seven states, but its force has been much weakened by the interpretation of the courts, several of which have held that it applies only to charters of banks of issue, and that acts incorporating banks of discount and deposit need not be submitted to the vote of the people.[3] In Michigan, Illinois,[4] and Wisconsin, acts for the incorporation of banks of any kind must still be approved by the popular vote. Only the general banking law is subject to popular sanction in Michigan, but in Wisconsin[5] and Illinois,[6] every amendment of the banking laws must be ratified by the people.

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1. Iowa (1846) Art.VIII, Sec.5; Wis.(1848) Art.XI, Sec's 4,5; Mich.(1850) Art.XV, Sec.2; Ill.(1848) Art.X, Sec.5; Ohio (1851) Art.XIII, Sec.7; Kansas (1859) Art.XIII, Sec.8.

2. Constitution of Missouri (1875), Art.XII, Sec.26.

3. Decisions holding referendum provisions applicable only to banks of issue: Kansas, Pope vs. Capitol Bank, 20 Kansas, 440; Iowa, 70, N. W., 752; Ohio, 42, O. S. 617. In Missouri, the words of the constitution themselves restrict the application to banks of issue.

4. It was held in People vs. Loewenthal 93 Ill., 191, that the referendum clause in the constitution of 1848 applied only to banks of issue, but the constitution adopted in 1870 extended the principle to all incorporated banks(Constitution of Illinois, 1870, Art. XI, Sec. 5). This was interpreted in Reed vs. People, 125, Ill. 592.

5. Van Steenwyck 645; Rusk vs. Van Nostrand 21, Wis. 159.

6. Reed vs. People, cited above.

These provisions were intended, except in Illinois, to provide against conditions which no longer exist, whatever their value may have been as a protection against the evils of an over issue of bank notes, their only effect at present is to render the adaptation of the banking laws to the changed needs of the present day slow and difficult.[1]

Of far more importance to the development of state banking in recent years than the referendum requirements, has been the gradual increase of general incorporation laws at the expense of special charters. It is needless to say that this movement has not been confined to banking corporations. In fact, banking has, in general, been somewhat later than other business pursuits in receiving freedom of incorporation. Banking charters were granted at first in all the thirteen original states, by special acts. Early in this century, the substitution of general incorporation laws for special charters became common in some kinds of business in the New England and Middle Atlantic States,[2] but general incorporation laws for banking were longer delayed.[3] In his report for 1848, Hon. Millard Fillmore, Comptroller of the state of New York, thus described the cir-

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1. See page 2
2. "Political Essays," by Simeon E. Baldwin, p. 119.
3. For general treatment of antebellum movement toward general incorporation laws for banks, see "Philosophy of the History of Bank Currency in the United States," by Theodore Gilman, Banker's Magazine, Vol. 50, p. 347.

cumstances which led to the passage of the general incorpora- tion law for banks, "The practise of granting exclusive privileg- es to particular individuals invited competition for these leg- islative favors. They were soon regarded as a part of the spoils belonging to the victorious party, and were dealt out as rewards for partisan services. This practice became so shame- less and corrupt that it could be endured no longer, and in 1838, the legislature sought a remedy in the "general banking law." According to the provisions of the constitution of New York adopted in 1846, charters were to be granted under general laws, "except where in the judgment of the Legislature the ob- jects of the corporation cannot be obtained under general laws,"[1] but the desirability of special charters for banking corpora- tions was not to be left to the judgment of the Legislature; they were in all cases to be formed under general laws.[2] The movement against "special privileges" had been made possible of realization by the invention of issue on bond deposits, and general incorporation laws for institutions of all kinds became the rule of the Middle West.[3] As long as banking charters could only be granted to approved persons, who were able to maintain

1. Constitution of New York (1846), Art.VIII, Sec.1.
2. Constitution of New York (1846), Art.VIII, Sec.4.
3. Michigan, in 1837, had attempted freedom of banking cor- porations by circulation based on real estate securities; vide "Banking in Michigan," by Alpheus Fitch.

heavy specie reserves, there was difficulty in applying the general incorporation idea to banks, but the bond deposit gave an automatic method of securing the safety of the notes, and enabled banking to become "free."

The states of the Middle West followed the lead of New York, and "freedom of incorporation" became their settled policy, but in the most of them,[1] the constitution permitted the establishment of a state bank with branches. With the extinction of state bank currency, however, the general incorporation law in all the states became and continues the sole form of bank incorporation.[2] The policy of general laws became the fixed rule of the West, and as each new state was added to the Union, it placed in its constitution clauses prohibiting the formation of corporations under special act, and giving the Legislature the right to confer corporate privileges by general law.[3]

In the other sections of the United States, quite a differ-

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1. Mich.(1850) Art.XV, Sec.1; Ind.(1851) Sec.201; Ohio (1851) Art.XIII, Sec.1; Kansas, (1855) Art.XIII, sec.1; Wis.(1848) Art.XI, sec's 4 & 5; Iowa (1846) Art. VIII, sec. 1; Minn. (1857) Art. X, sec. 2;

2. In Illinois, special charters were used to a slight extent before 1870, when the Constitution required general laws. Constitution of Illinois (1870) Art. XI, sec. 1; vide P. & Chicago Gas Trust Co., 130, Ill. 268.

3. Cal. (1849) Art.IV, sec.31; Nev.(1864) Art.VIII, sec.1; Neb.(1866) Corp's, sec.1; Col.(1876) Art.XV, sec's 1,2; N.D.(1889) sec. 131; S.D.(1889) Sec. 191 Mont.(1889) Art.XV, secs.2,3; Wyo.(1890) Art.X, sec.1; Wash.(1889) XII, sec.1; Or.(1857) Art.XI, sec.2; Ut.(1895) Art.XII, sec.1.

ent state of affairs had existed. In the New England, Middle Atlantic, and Southern States, up to the time of the Civil War, the system of special charters was almost universal. Free banking on bond deposit had been adopted in many of these states, but only in New York as an exclusive system. By the side of the specially chartered banks, the free banks played but an insignificant role, and when, by the imposition of the ten per cent tax on note issue, no opportunity was left for the operation of the bond deposit provisions, these states relapsed into the exclusive use of special charters, since they were not forbidden by their constitutions.

Since 1865, there has been a steady growth in the use of general corporation laws for banking in the Atlantic and Southern States. In the New England States, on the contrary, the system of special charters has held its ground, so far as banking is concerned.[1] This has been caused by the fact that the national banks have filled entirely the needs of this section. Very few banking charters have been granted in any of the New England States during the past thirty-five years. Banking corporations occupied an anomalous position in the Middle Atlantic

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1. Vermont permits the organization of banks under a general law, which is antebellum in its main outlines. In Massachusetts, also, banks may be organized under its old law, but the conditions are too onerous for banks simply of discount and deposit.

States. While corporations for carrying on almost any other business might be formed under the general laws, it required a special act of the Legislature to enable an association to be formed for banking purposes.[1] The old free banking laws were retained in some of these states, but they were not suited to the needs of the banking business, and special charters were nearly always secured. The feeling for an assimilation of banking to other lines of business caused the prohibition of special charters in the Pennsylvania Constitution of 1875,[2] and in the New Jersey Constitution of the same year.[3] Maryland has a general law for the formation of banking corporations, but it is little used, and practically all banks are formed under special acts.[4] Delaware alone of this group retains the old form of incorporation as a sole means of securing a charter, its recent constitution expressly exempting banks from the corporations which may be formed under general laws.[5]

The same tendency, but slower in operation, may be observed in the Southern States. The agricultural interest has always been predominant in the South, and until quite recently, it was

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1. New York, of course, an exception.
2. Art. III, sec. 7.
3. Art. IV, sec. 7, clause 11.
4. The Maryland Constitution of 1867 permits the Legislature to use its discretion in the matter of special or general acts of incorporation. Art. III, sec. 48.
5. Constitution of Delaware (1897), Art. IX, sec. 1.

practically the only business carried on extensively. Commercial and manufacturing industries were few, and the result was that freedom of incorporation made but a slow advance. Even ordinary business corporations were, in most of the states, chartered by special act nearly as late as the Civil War. In only a few of these states was there any use of the free banking laws, and in none of them did it attain any success. Until the period of Reconstruction, there was not, in the constitution of any Southern State, any prohibition of special charters. The framers of the Reconstruction constitutions were familiar with the provisions requiring corporations to be formed under general laws then in force in the Middle West, and they attempted to engraft that policy on the new constitutions of the South. In most cases, these clauses were either so limited in application as to leave the hands of the Legislature practically free, or they were omitted in the constitutions adopted somewhat later, but in Tennessee,[1] Arkansas,[2] and West Virginia,[3] they have remained in force. More recently, Louisiana,[4] Mississippi,[5] Kentucky,[6] and South Carolina[7] have, by constitutional provisions, adopted the general corporation act as the exclusive method of

1. Tenn.(1870) Art.XI, sec.8
2. Ark.(1868) Art.V, sec.48
3. W.Va.(1872) Art.XI, sec.1
4. La.(1879) Art.46
   also (1898) Art.49
5. Miss.(1890) Sec 178
6. Ky.(1891) Sec 59 subd 7
7. S.C.(1895) Art.IX, sec.9

incorporation. An amendment to the constitution of Georgia, adopted in 1851, permits the General Assembly to incorporate banking companies by general act. While these changes did not affect, in most cases, other lines of business, they marked, in nearly all cases, a change in the method of granting banking charters.[1] Even in those states where special acts are still constitutionally possible, they are, with one exception, rarely used. Virginia, Florida, and Alabama all have free banking laws by the side of special charters, and almost all banks are incorporated under the general laws. In North Carolina alone does the special charter hold entire possession of the field.

The net result of these changes has been a complete reversal of systems of bank incorporation in the Southern and Atlantic States. Where, as late as 1870, special charters were the almost universal custom, at present only two states, Delaware and North Carolina, do not permit the formation of banks under general laws, and in only a few others, Virginia, Alabama, Florida, and Maryland, is the special act used with more or less frequency. The increase in the number of charters asked for and the consequent entailing of labor on the Legislatures have been the most potent causes in bringing this change.[2] There are

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1. Since 1885, banks might be incorporated by general act in S. C. Laws of S. C., 1885, XIX, 212.

2. This is illustrated by the case of Georgia. The plan first adopted was the framing a special charter, and then granting to all succeeding applicants the powers and imposing the liabilities and duties contained in it. Ga. Laws, 1891, p. 172.

also been at work the continually acting tendency toward assimilation of state constitutions.

Contemporaneously with the movement toward freedom of incorporation has gone what may be styled the differentiation of the "general incorporation law."[1] In nearly all the states, prior to the Civil War, there had grown up "general incorporation laws", under which, to use the ordinary phraseology, "associations for carrying on any lawful business" might be formed. Banks, were, however, generally excepted (as has been shown above) from the operation of these laws, and formed under special charters.

Before 1860, banks were never formed in any of the states under the "general incorporation laws"; special restrictions were always imposed, but these regulations related largely to the right of issue and its proper exercise. After the imposition of the ten per cent tax on state bank notes, it seems, as has been said above, to have been felt in most of the states that the business of banking could be left to individual enterprise without any special regulation. Consequently, in most of the states, the general law included banking in the lines of business which might be formed. In some of the "free" banking

1. The "general incorporation law" has a technical meaning in American law. Previous to this, the term has been used in its larger sense in contradistinction to special charters, but henceforward, it will be used in its stricter meaning of the body of rules under which the great mass of corporations are formed in the American states.

states, the old provisions were retained unaltered, and in others, they were repealed and resort had to the "general incorporation law." The newer states in the West simply allowed banking incorporations to be formed under the general law.

While there were a few states which differentiated banking charters before 1887, the movement may fairly be considered as having begun about that time. Since then in nearly all the states,[1] there has been a growing tendency to treat banking differently from other lines of business, and to recognize that it needs special requirements. This was caused undoubtedly by the growing number of banks about that time, and the consequent attention which the subject received.

One difference between the national and the state laws concerning banking will be readily seen. In the states, the banking law is part of a larger whole; it simply embodies the differences which the Legislature has seen fit to make between banking and other ~~lines of~~ business. entdum The foundation on which the state banking laws rest is the general corporation law-- it is found therefore that, as a general rule, the state laws are less exhaustive than the national, since it is not necessary to legislate specially on points which are already satisfac-

1. There still remain a few states having general laws, in which banks are under the same regulations in every respect as other lines of business. They are Arkansas, Idaho, Oregon, Nevada. In many others, the differentiation is slight.

torily covered in the general law. The national banking law, on the contrary, except for judicial interpretation of the common law governing corporations, is full and complete in itself, since the national government has never enacted any general corporation law. In order to understand the development and the present status of the state banking laws, reference must constantly be had to the principles of the general corporation law.

The stages of progress in the incorporation of banks since 1865 then are three; (1) The special charter; (2) The undifferentiated general incorporation law; (3) The differentiated general incorporation law. While very few states have passed through all these, it is yet true that if we take periods, we shall find each that predominant at a given time. From 1865 to 1875, the special charter was in use in most states, and from 1875 to 1887, the "general incorporation law" was the controlling type, and since then the differentiated incorporation act has become the almost universal form of bank incorporation. The special charter and the undifferentiated act are receding types. It is to be noted that the special charter and the "general incorporation act" were contemporaneous, springing from different social and political conditions, and while many special charters have passed into "general acts", more have gone directly into the differentiated act. A high degree of regulation may be built

up under special acts, as was the case in most of the states prior to 1860. The same thing may be observed in the Southern states. For example, North Carolina, while still keeping the special act, has a much higher degree of regulation than many states with freedom of banking incorporation. It is not therefore true that the stages described above represent a consecutive development; it is rather to be understood that only the last is a stage to which two previously existing stages tend to come.

Since, however, at the beginning of the present movement in the direction of more stringent regulation of state banks, the "general incorporation law" was the predominant type, especially in those sections where the influence of state banking has been greatest, it is to be taken for the starting point for the evolution of the present, in many cases highly developed systems. Legislation is always directed toward the correction of existing systems, and so the aim of the state laws may be comprehensively described as an attempt to amend "general incorporation laws" in those respects in which they have been found unsuited to the proper control of banking business.

CAPITAL.

The "general incorporation law" has practically no capital requirements. It is designed to fill the needs of many classes of enterprises, varying widely in their needs for capital. Incorporation is sought under the "general law" for carrying on almost every conceivable form of business, and it has been the universal rule in the states to leave the question of capital almost entirely to the discretion of the incorporators.[1]

The special charter may be quite as liberal in its provisions with regard to capital, as the general law, but it is not likely to be so. It is quite improbable that any American Legislature would grant banking charters without making some provisions for a capital, supposed to be adequate to the needs of the incorporation. Since the most glaring and obvious defect of the banks chartered under general acts was the absence, in many cases, of any proper capital, one reason may readily be seen why banking legislation has been so much faster in the West than in the South. While the system of special charters did not furnish sufficient safeguards for the banking business,

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1. A large majority of American states require neither a minimum nor a maximum dapital. In some, however, a small minimum, rarely exceeding $1,000, is required. The maximum permitted is generally so large as not to be a question of importance in banking charters.

it was, in many respects, very much superior to the "general law," and especially was this true in the case of capital requirements.

As soon as attention began to be paid to the regulation of the banking business in the states, the question of bank capitalization was generally the first to receive attention. The national banking laws had special requirements of this kind; the surviving antebellum systems in the Middle West followed the same policy; in fact, some species of capital requirement was seen to be the central point in any regulation of free banking. Under the American systems, the capital stock is a buffer interposed between losses, which the bank may suffer, and the bank's creditors. If there is no capital, losses may fall directly on the creditor, and the larger the capital stock, other things being equal, the less the likelihood of that loss.[1] It has been, then, wherever any regulation of banking has been attempted, the universal rule to enact that banking corporations shall have a certain minimum capital.

Amount of Required Capital.--At the present time, only a few states, the remains of a large number,--Arkansas, Mississippi, Tennessee, South Carolina, Oregon, Arizona, Idaho, Neva-

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1. This is not meant as a statement of the economic position of the capital of a bank; it is the view which the American systems of regulation take of capital stock.

ia, New Mexico, and Virginia, impose no special requirements as to the capital of banking companies. In these states, so far as capital is concerned, banks may be formed on the same terms as other corporations. The decision as to the amount of capital needed, rests entirely with the persons seeking incorporation, except that the Virginia "general corporation law" requires a minimum capital of $500.

The maximum capital requirement in the differentiated systems varies from $100,000 to $5,000. These amounts have been reached in each state in one of three ways: (1) In the states which had undifferentiated systems, banks generally established a minimum for themselves. For example, when California, in 1895, required a minimum for the first time, it was placed at $25,000, because, while there were a few banks operating with a less capital, there was no large class of such banks, and it was thought that no great injury would be done by debarring them. In Nebraska, on the contrary, the law of 1889 fixed $5,000 as a minimum.[1] This was a necessity, because there were many banks with no greater capital. Thus, these states have generally accepted an order established by economic conditions. (2) Closely corresponding to the class just described, has been the case of the passage of special charters into differentiated laws. In such states, the law has required a minimum which is

1. Laws of Nebraska, (1889) ch. 37, sec. 1.

so fixed as to permit the organization of banks with as low a capital as formerly. In both these classes, there has been little movement since the first fixing of the minimum, and it is improbable that there will be any, unless changes should occur in economic conditions. (3) The minimum has been fixed in the last group in an entirely different way. As has been said before, certain states, in which "free banking" was most widely used before the war, retained the laws then in force, without lapsing into the "general corporation law." These states were Indiana, Illinois,[1] Ohio, Iowa, Minnesota, Michigan, Wisconsin, New York, Vermont, and Louisiana. The minimum requirement in none of these states was less than $25,000. In the most of them, this has been lowered from time to time, especially in the more westerly ones, but in some, it has remained rigidly at the same amount. As the need for small banks has sprung up, the old law has not changed so as to meet the need fully. Probably the referendum provisions discussed above have given a fixity to the law in some states which it would not otherwise have possessed. There has also been undoubtedly a feeling against

1. The case of Illinois has been somewhat exceptional. It alone of this group was able to use special charters, but only under the restriction of the referendum. Its present law, adopted in 1887, (Laws of Illinois, 1887, p.89), followed the general trend of the Indiana law, which, passed in 1872 - 1873, was practically the antebellum law remodelled. These states, while not strictly under the old law, are yet practically under its influence.

the incorporation of very small banks in some states. The proof that there are economic needs for small banks is the fact that in these states, and more especially in the ones having high minimum requirements, the number of private banks is very large.[1] The ante bellum policy was to give incorporation only to banks of issue, and it was believed that banks of a certain size only could properly perform that function. The question now is not whether small banks of discount and deposit shall exist,--they are already in being. The point is whether there is any advantage in denying the right of incorporation to such institutions.[2] In Michigan,[3] Louisiana,[4] Minnesota,[5] and New York,[6] the old capital provisions have been gradually lowered to meet the demand for small banks.

There is a wide difference in the minimum required in the various states, and a certain arrangement may be made into sectional groups according to capital required. In none of the New England and Atlantic States, is it less than $50,000, except in the case of New York. The $25,000 group begins with this state, and includes also Ohio, Indiana, and Illinois. In the Middle States, except Missouri where special charters prevailed before 1865, capital was never lower than $25,000, and in Illi-

1. See Appendix "Statistics of Private Banks."
2. See on this point chap. 7, "Private and State Banks."
3. Mich. 1887, Art.205, Sec.1; also 1891, Feb. 26.
4. La., 1882, chap. 80.
5. Minn., 1887, chap. 63.
6. N. Y., 1874, ch. 126; 1882, ch.409, sec.29; 1892, ch.689.

nois and Michigan, it was $50,000. Ohio and Indiana have never seen fit to lower this minimum, but in Illinois, in 1[illegible], it was reduced to $25,000. This is still the nominal requirement in Wisconsin[1] and Iowa,[2] but in Wisconsin, since only $15,000 capital need be paid in, for practical purposes the minimum is lower, and in Iowa, savings banks may be formed with a capital of only $10,000. These banks, for the most part, carry on a purely commercial business. There has been a reluctance seemingly to face the situation frankly, and state banks are still in some way connected in the legislative mind with note issue.[3] Minnesota and Missouri require a capital of only $10,000. Michigan until recently had a minimum of $15,000. So that the more westerly and northern of the Middle States require minimum capitals of ten and fifteen thousands. The agricultural states in the Western group have the lowest capital requirements found in any states. In Kansas, Nebraska, North Dakota, South Dakota,

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1. Wisconsin, 1861, chap. 242, sec. 14.
2. Iowa, 15 G. A. chap. 60, sec's 2, 3.
3. The same thing was done in the period immediately after the war by Kansas and Missouri. Banks, to be known as savings banks, were allowed to be chartered with a capital of $50,000, but only ten per cent of capital had to be paid in at once. This was a recognition of the needs of incorporation, but the old idea, still persisting from antebellum conditions, that banks of issue alone were to be incorporated, forced the states to really meet needs by roundabout means. The "savings banks" in both states were really commercial banks. The names of many banks in Missouri still show this transition period.

and Oklahoma, banks may be incorporated with capitals as low as $5,000. The other states in the Western group and the Pacific States do not permit, as a rule, a lower capitalization than $25,000.[2] In the South, the necessary capital is $15,000 in Georgia, Kentucky, and Alabama.[1] In Louisiana, the minimum is still lower, being only $10,000, while in West Virginia, the real minimum is $2,500, since only ten per cent is required to be paid in, the remainder being subject to the call of directors.

The United States may be divided, then, roughly into four great groups according to the capital which a bank must have before it can be ~~come~~ incorporated under State law.[3]

I. The New England and Middle Atlantic States, requiring, with the exception of New York, capitals of at least $50,000.

II. New York, Indiana, Illinois, and Ohio, the Pacific States and Territories, and the less agricultural states of the Western States, requiring $25,000.

III. The Middle States (except Indiana, Illinois, and Ohio) and the Southern States, requiring $15,000 or $10,000.

IV. The agricultural part of the Western States, allowing incorporation with capitals of $5,000.

1. In Georgia and Alabama, the minimum capital is $25,000, but only $15,000 need be paid in.
2. In Montana, the minimum is $20,000. By an act passed in 1890, (ch.31) banks may be formed with a capital as low as $10,000 in Wyoming.
3. The significance of these capital requirements will later be discussed under "Economic Side," see page

The reason for regulation of capitals is, as has been said, that it is a safety fund or buffer between losses and the depositors. The theory is that this sum should bear some relation to the volume of business transacted by the bank. In the national bank act, the amount of capital required depends on the size of the place in which the bank is located. It is assumed that a bank in a place of 5,000 inhabitants will be able to do a larger business than one in a smaller town. On account of the small size of the capitals required in some states under the state laws, it has been thought expedient to carry this principle into minute details. Thus, in all the states with a \$5,000 minimum, except Kansas,[1] a regular scale, advancing by small sums, is prepared. For example, in Nebraska, towns with a capital of less than 1,000 population may have state banks with a capital of \$5,000; less than 1,500, \$10,000; less than 2,000, \$15,000. The general tendency has been toward refinement in the capital scale.

Before the beginning of the present movement toward the improvement of the state banking systems, the usual rule ~~is~~, in states where capital of a fixed amount was required, was to have only one specified sum for places of any size, and this is still the rule in most cases where the capital requirement is

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1. See below, page 31

high. There is much less tendency to discriminate in capital requirements when $50,000 or $25,000 is the minimum. Vermont, New Jersey, Pennsylvania, Indiana, West Virginia, and Ohio make no distinctions. A minimum capital is fixed, and it is the same for places of any size. The refined scales have arisen in three ways: (1) The uniform requirement was found unsuited to the needs of the state, since it was not low enough, and instead of making a lower uniform minimum, banks were allowed to be formed with less capitals in places of small size. This has been the case in Minnesota, Georgia, Michigan, Alabama, Louisiana, New York. (2) In some cases, in passing from the "general corporation law" to a differentiated system, a very low capital was required, which was later found to be unsafe, and a differentiated scale adopted. This was the case of Oklahoma and Kansas. (3) The "general corporation law" having given rise to capitals of varying size, capital at the outset was required to correspond with size of place, as in California, Nebraska, North Dakota, South Dakota.

It is to be noted that the scales generally do not go very high. After the capital requirement reaches, in most states, $25,000, and in some, $50,000, banks may be started anywhere. It is only in Kentucky, New York, California, Illinois, Michigan, and Massachusetts, that requirements go to $100,000. As

compared with the national system, the capital is, generally, lower not only for small towns, but for places of every size. The grades do not advance so rapidly, nor extend so far.

The recognition of capital as a fund for the security of creditors was not made often in our early history. The same idea is to be seen in the restriction of note issue on the basis of capital. Looking, as the antebellum systems did, to the security of the note holder, it was natural that the capital should be considered a fund for their protection. These restrictions also served the purpose of holding the note issue within bounds.

It is evident that regulation of capital according to the population of the place in which the bank is located is a very crude way of securing any proportion between capital and volume of business. The more elaborate the sliding scale is made, the more nearly on an average will an approximation be made to the desired result, but no scale can take into account differences in localities as to business, nor the more important question of competition. Even if towns of 1,500 population had equal amounts of business, it cannot be known among how many banks this is divided. So that if capital regulation is of any value, it is worth while to secure a more regular proportion between capital and deposits than can be gotten by

scales. In this connection, the recent legislation in Kansas is worthy of notice. In 1897, the legislature being convinced of the utility of grading its capital requirements, which had previously been a uniform minimum of $5,000, brought into play a new method of applying the principle that capital should be regulated by business. It was enacted that the total investments of any bank, exclusive of United States bonds, should not exceed four times the capital and surplus actually paid in.[1] The purpose and operation of this clause is thus described by the Kansas Bank Commissioner:[2] "One provision, which produced the greatest opposition, was the section which limited the total investments of every bank to four times its capital and surplus. The theory upon which the adoption of this section was urged, was that a bank's capital should bear some proper proportion to the volume of business transacted by it; and there being no possible way by which the amount of deposits could be restricted, the idea of restricting the investments appeared to be, not only possible, but wise. It was argued, in support of the proposition, that it would result in an increase in the capital of small banks, thereby giving greater protection to depositors; that it would not be a difficult matter to procure additional capital when, for each thousand dollars this

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1. Laws of Kansas, 1897, ch. 47, sec. 9.
2. Report of Bank Commissioner, 1897 - 1898, p. VIII.

invested, the bank could invest four thousand dollars, and above all, that banks should be content with receiving an income on four dollars for every dollar invested. The operation of this section has resulted in nearly one hundred banks increasing either their capital or surplus. Many have carried their entire earnings to surplus, thereby adding to the strength of the bank and the security of depositors."

It has been contended by an eminent authority that such legislation is of no value, being based on "a conjectured average too rough to be of service in any individual case. In this respect, as in so many others, the judgment of the persons most interested, acting under the law of self preservation, is far more trustworthy than any legislative decision."[1] There seems, however, a general concensus of legislative opinion that some form of regulation of capital is necessary. The theory of the state and national systems is that it is proper to prescribe those things which persons would do if they acted with good judgment. Most bankers would lay by a surplus fund if there were no legal requirement, but it is none the less expedient to force others to do likewise. It is also to be noted that with regard to the size of capital, the interest of the banker runs counter to the protection of the depositor. The larger the business which can

1. Dunbar, "Theory and History of Banking," page 21.

be built on a capital, the greater will be the dividend earned. The general banking laws are built on averages: if prescribing a certain capital will cause men, who otherwise would not, to make business and capital more closely correspond, and if this is desirable and can be accomplished without any ill effects, it seems a proper addition to the banking laws.

There is one consideration, however, which deserves mention. The effect of a sliding scale differs from the Kansas method in an important particular: Under the operation of the sliding scale, what might be termed a "capitalistic monopoly" is created. For example, in a town of 2,000 people, if the capital required is $50,000, there would probably be one bank only, since there is not enough business to justify dividends on two such capitals, and no smaller bank can be started. Under the Kansas system, another bank could be organized with $5,000, and as its business increased, its capital would grow. Evidently, competition is made freer, but it is doubtful if this would be beneficial. While competition should be allowed, the economies of larger institutions ought to be preserved. The one bank would serve the people more cheaply probably than several smaller ones. It would appear then that a sliding scale is of importance, and should be supplemented, and not supplanted, by the Kansas method.

It is necessary, of course, in any application of the Kansas law that sufficient encouragement should be given to individual enterprise. If the capital requirement is heavy, it will take away incentive to build up business to a certain extent. Deposits which might be secured, will not be gotten. It does not seem, however, that to restrict investments to four times the capital and surplus is a severe rule. The national banks, on the average, do not do nearly so profitable business. In 1899, their investments were only about three times their capital and surplus.

Payment of Capital.--Under "general incorporation laws," there may exist a wide difference between nominal and paid up capital. The rule has been to leave the amount of the variance to the discretion of the directors, who have power to require the payment of the remainder of capital at such times as they think proper.[1] As long as banks were allowed to be incorporated under the general law, it was possible for the authorized capital to be largely in excess of the sum actually paid in. It is assumed that persons having dealings with corporations will be able to ascertain the real capital, but the depositor in a bank stands on a different footing. As a general rule,

1. In some states, part of the capital must be paid in; e.g., in Vermont, one-half; a number of states require [illegible] per cent, but in the great majority, no sum is fixed.

be made to distinguish between the nominal and the authorized capital. He gives credit frequently on the basis of the published capital, and it is thought expendient that there should be no deception in the matter. The working of a law undifferentiated in this respect has been forcibly described by the California Bank Commissioners, who say, "Licenses to conduct the business of banking have been demanded and received under the law, the Commissioners being powerless to refuse them, when the amount of capital stock paid up was merely nominal, in fact, infinitesimal, and these concerns most loudly proclaim their authorized capital."[1]

Again, if capital is regarded as a fund for the security of depositors, it is absolutely necessary that the capital should be paid up, or the purpose of the law is defeated. It has already been pointed out above that in certain states the capital requirements are considerably affected by the provisions for its payment. It is quite useless to prescribe a minimum capital, unless some provision is made to secure payment. The case of West Virginia is in point, nominally the minimum capital is $25,000,[1] but practically, the law is entirely undifferentiated on this point. Only ten per cent need be paid in before the

1. Twelfth Annual Report of Banking Commissioners of California.

2. Such provisions may be useful, however, in another way. See pages 67,68

3. Laws of West Virginia, 1872, ch. 235.

certificate of incorporation is issued, and the remainder is subject to the call of directors. These conditions are the same as those prescribed under the "federal law."

The national banking act has been the most powerful influence in determining the ~~state~~ form of legislation directed to remedying this evil. In the following states, fifty per cent must be paid in before beginning business, and the remainder in a specified time, ranging from ten per cent per month to two years: Pennsylvania, South Dakota, Missouri, California, Oklahoma, Wyoming, Colorado, North Dakota, Massachusetts, Florida, Kentucky, Indiana, Michigan.[1] In the most recent legislation, there has been manifested a tendency to go somewhat farther in stringency, and in Maryland, New York, Iowa, Montana, Vermont, Minnesota, Nebraska, Illinois, New Jersey, and Kansas, the entire capital must be paid in before any business can be transacted by the corporation. In Georgia and Wisconsin, specified sums must be paid in, irrespective of the size of capital, while in Washington, three-fifths of the capital must be paid in.

The remaining states are less rigid in their requirements. In those enumerated above as not requiring a minimum amount of capital, there are no provisions for payment.

It is quite conceivable that a state, which allowed banks to

1. Slight variations from this rule are Ohio, [illegible] per cent; Utah, 25 per cent, remainder in one year.

be formed with capitals of any size, might seem desirable to have authorized and real capital correspond in order that the depositor might not be deceived by a fictitious capital, but since the first step usually taken by a state in differentiation is the fixing of a capital minimum, no such attempt has been made in any of the states.

The only good reason for allowing any part of the capital to remain unpaid are (1) That the bank cannot use all of its capital conveniently at first; (2) The convenience of the shareholders in paying by installments. Any provisions allowing greater liberty in paying than is required by these considerations are to be condemned as likely to lead to evils.

Impairment of Capital.--Having secured the payment of the capital considered requisite for the business, it is necessary to provide that the amount paid in shall not be impaired in any way except by a legal decrease of stock, which shall not be so great as to sink capital below the legal minimum. There are two ways in which capital may be impaired: (1) By payment of unearned dividends; (2) By losses greater than profits.

Under the "general incorporation law," it is the general rule that dividends are to be paid only from earnings, but in providing a safeguard, the states may be divided into two great classes: (1) Those imposing a liability on directors for divi-

dends which impair capital. (2) States which make directors responsible only when dividends impair capital to such an extent as to make it unequal to the payment of the liabilities of the corporation. The last class of states is far the most numerous, and in them there is no restriction of the payment of dividends so long as the assets exceed liabilities.

It is always a matter of difficulty in the ordinary corporation to ascertain whether dividends are paid from capital or earnings, since such a calculation depends on the valuation of property. In the case of a bank, property is almost entirely in the form of debts due the bank, and the value of such assets is easier to estimate.[2]

Before the enactment of the national banking act, it became a well settled rule in the states that dividends could only be paid when the net profits of the bank exceeded its losses, and that if capital was impaired by losses, no dividends should be made until the capital was restored to its proper amount.[1] The same principle has been recognized in the state banking systems since 1864. Even in most of the states

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1. See for example New York (1838) ch.260 #28; Wis.(1855) ch.479, sec.40; Minn.(1866) ch.XXXIII, #31; Ohio (1851) 49 v 41, sec.22; Ind.(1855) p.23. If dividends were made, any person in interest might apply to the courts for a receiver.

2. In nearly all the state laws, debts unpaid for a certain length of time are to be considered valueless in estimating a bank's assets for the purpose of finding net profits.

where the 'general corporation law' does not restrain impairment of capital, it has been recognized that banks should be regulated differently in this respect. In none of the state laws, was any attempt made to go farther until the New York law of 1882. The national law in its original form did not provide any better method of keeping capital up to its full value. It was not until 1873, that the Comptroller of the Currency received power when capital was impaired to order the directors to assess shareholders.[1] Previous to that time, the only remedy was to wait until dividends made up for losses.

In the state systems, the operation of the prohibition of dividends was not adequate to the necessities of the case, but in nearly all the legislation, until within a comparatively recent period, it was the only remedy available. Before any method of assessment could be put in force, it was necessary that a satisfactory system of examinations should be in force, and in some cases, even when this has been provided for, there has been a slowness in giving the officials such summary powers.[2] In most of the states where inspection is thorough, this power has been given to the heads of the state banking systems. As soon as examinations were regularly made, it was found that in many cases the capital of banks was grossly impaired,[3] and

1. Sec. 5205, Revised Statutes of U. S.
2. See for further discussion of this point, "Supervision."
3. For example, see "Report of Bank Examinations in Missouri," 1897.

It was urged that a summary remedy be provided for this evil. In general, legislation has followed the lines of the national bank act as amended, and the state officials have been given authority to cause an assessment to be made by the directors, and if this is not done, to apply for a receiver for the bank. This is the state of the law in New York,[1] Michigan,[2] Oklahoma,[3] Missouri,[4] Kansas,[5] Nebraska,[6] Pennsylvania,[7] Minnesota,[8] Georgia,[9] Florida,[10] and Indiana.[11] In Illinois, the State Auditor, himself, assesses and collects the sum necessary to restore capital.[12] If the directors of a bank do not assess on the order of the State Auditor in Iowa, they are themselves responsible for any losses.[13] The Wisconsin law simply provides for the publication of the fact in a local newspaper, if any impairment is not made good.[14] In the other states, the only way by which losses may be made good is by the accumulation of dividends.

1. N. Y. (1890) ch. 420.
2. Mich. (1889) Act.205, sec.42.
3. Okla. (1899) ch.4, sec.43.
4. Mo. (1895) p.97.
5. Kans. (1897) ch.47, sec. 20.
6. Neb. (1889) ch. 37, sec. 13.
7. Pa., Feb.(1895) sec. 6, P/ L. 4.
8. Minn. (1895) ch. 145, sec. 19.
9. Ga. (1895) p.58.
10. Fla.(1889) ch. 3864, sec. 34.
11. Ind. (1895) p. 205.
12. Ill. (1887) p. 90.
13. Iowa, 25 G. A. ch. 29, sec. 2. The power is given by the Revision of 1897, to apply for a receiver if the directors do not comply. Code of Iowa, sec. 1877.
14. Wisconsin (1895) ch.291, sec.11. The law of 1897, passed by the legislature, but rejected by a popular vote, gave the Examiner the right to apply for a receiver.

SUPERVISION.

Economic conditions have exercised no influence in the formation and growth of systems of supervision. Banks of discount and deposit, wherever situated, need practically the same oversight. As it has become necessary to differentiate banks from other corporations in the matter of capital, there has also arisen a need for supervision, partly to insure that capital requirements will be observed, and partly that other regulations peculiar to the business of banking will be obeyed. Thus, while supervision may be considered, in itself, a differentiation of the general incorporation law, it is brought into existence, not for its own sake, but in order that other differentiations may be effectively carried out.[1] As long as banking is on the same footing in other respects as other lines of business, supervision is rarely exercised. It is only when it is recognized that the right of the depositor needs peculiar safeguards that any government oversight is exercised.

In its highest form of development, supervision includes adequate means of ascertaining whether the law is complied with, together with the bestowal of power on some official to act when it is violated. In reaching conclusions as to whether a bank is

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1. California is unique in this respect. Its system of supervision was imposed on a general incorporation law. Gradually, however, a considerable degree of differentiation has been brought about.

obeying the law, two means are used; (1) Reports are required to be made at intervals by the bank's officers under oath; (2) Examinations are made by state officials from time to time.

The only form of supervision widely in use in the states until the beginning of the present movement, was the requirement of reports. In many of the states, the antebellum laws had imposed on banking corporations the duty of making reports of condition, and this legislation, for the most part, has been in force during the whole period since the passage of the national bank act. Thus, in 1873, when the Comptroller of the Currency first began to publish statistics of state banks, reports were made in nearly all of the New England, Atlantic, and Middle States.

An examination of the table on page 54 will show the movement since that time in this respect. It will be seen that in some cases, laws have been passed requiring reports without making any provision for examinations, or investing any officer with power to take any action with regard to violations of law disclosed by the reports. Of this character, are the laws of Mississippi,[1] Colorado,[2] Washington,[3] and Kentucky.[4] This was

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1. Miss. (1888) p. 29.
2. Col. (1877) sec. 263.
3. Wash. (1886) p. 84
4. Ky. (1893) chap. 171. The Secretary of State may require reserve made good, but evidently such a power could seldom be exercised simply on the basis of a report.

the status of supervision in a large number of states prior to 1887, and it may be considered as the first stage in the evolution of the present systems. Banks were usually required to publish these reports in some local newspaper, and thus a certain amount of what may be styled "public supervision" was gained.[1] When used alone, however, reports furnish an inadequate basis for an efficient system of regulation. In the years preceding 1887, in the most of the states, reports were made on certain days, and generally, not more than once a year.[2] Since the report has become a real means of supervision, its character has changed, and it is now made more frequently, and on days set by the officials, and not known in advance by the bank's officers. So that there has been a rapid increase both in the number of states requiring reports, and an equally important advance in their efficiency.

Bank examination has been always somewhat later than reports in making its appearance as a means of supervision. Even at the close of the Civil War, it was only in the New En-

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1. In Tennessee, while banks make no reports to state officials, they must publish in a local newspaper. Tenn. (1877) ch. 142, sec. 17.

2. A considerable part of this kind of legislation has had the aim of securing statistical information. The Comptroller of the Currency has, at various times, urged on the state governments the expediency of requiring reports. (See Report of the Comptroller of Currency, 1879, p. 59), and it was in compliance with his request that the greater part of the legislation prior to 1887 was enacted.

land States that banks were regularly examined by state officials.[1] In the other states, examinations were made only when there was reason to suspect improper management, or on application of stockholders and creditors. The development of legislation on this subject in New York may serve as a type of that in the other states. Under the provisions of the Safety Fund Act, the Commissioners were to examine each bank quarterly;[2] the "free banks," however, were not subject to this requirement, and were only examined by order of the Chancellor or application of persons interested.[3] During the years 1842 - 1843, all banks were under the supervision of the Safety Fund Commissioners,[4] but in 1843, their office was abolished, and the Comptroller placed in charge of banks.[5] He was not empowered, however, to examine them, unless he suspected their solvency, and it was not until 1884, that examinations were regularly made. The first attempts at supervisory legislation after the Civil War generally followed the precedent set by the laws already in existence. Thus, in Virginia,[6] Florida,[7] New Mexico,[8] and North Carolina,[9] the examinations were to be

1. Rhode Island was an exception, following the Atlantic and Middle States in this respect.
2. New York, (1829) ch. 94, sec. 5.
3. New York, (1838) ch. 260, sec. 25.
4. New York, (1841) ch. 363.
5. New York, (1843) ch. 218, sec. 6.
6. Va. (1884) ch. 108, sec. 1.
7. Fla. (1868) ch. 1640 sec. 12.
8. N. M. (1884) ch. 30, sec. 7.
9. N. C. (1887) chap. 175.

made only on application, or upon the bank [illegible] concerned [illegible] by some such official. The only laws passed prior to [illegible] for regular examinations were those of New York, Indiana, Minnesota, and California. Since then, the movement has been rapid, until at present, regular examinations are made in all the states, except Delaware, Virginia, South Carolina, Mississippi, Alabama, Arkansas, Tennessee, Kentucky, Ohio, Colorado, New Mexico, Washington, Oregon, Idaho, and Nevada. It will be noticed that nearly all these states belong to the class of those permitting banks to be formed under the general incorporation law. Ohio, Colorado, Alabama, Washington, and Kentucky are the only ones requiring any capital for the formation of banking corporations. On the other hand, Arizona is the only one of the states and territories, except those using special acts of incorporation, which has regular examinations, unaccompanied by capital requirements.

The influence of the adoption of a system of supervision on the banking laws is very marked. As has been said before, the purpose of supervision is to carry into effect laws which without it would be inoperative, but, when once put into operation, it becomes itself an active force in promoting new leg-

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1. N. Y. ch. 409, sec. 1[illegible].
2. Ind. 1873, ch. VIII, sec. 18.
3. Minn. 1878, ch. 84, sec. 14.
4. Cal. 187[illegible], p. [illegible].

islation. This has already been pointed out under "Impairment of Capital," but its influence has extended to every part of the bank law. Examinations soon disclose evils which the law does not deal with, or for which the remedy provided is inadequate. New legislation is asked for, and usually granted by the legislatures.

There are, then, fifteen states and territories in which there are no provisions for the examination of state banks. This statement gives, however, an erroneous impression of the extent to which banking is unsupervised, since the number of banks in these states is somewhat less on the average than that in the other states. Of 4,100 banks incorporated under state laws, in operation in 1899, nearly 3,100 are regularly examined by state officials, so that while only about two-thirds of the states provide for supervision, the number of banks in those states is three-fourths of all the state banks in existence. In recent years, the spread of supervision has been faster than the growth in numbers: in 1886, there were 1,[illegible]26 state banks in all the states and territories, and only 341 were subject to regular examinations. While state banks since that time have nearly trebled in numbers, nearly nine times as many banks are now under effective supervision as were then.

An examination of the list of states making no provision

for periodical examinations, will show that they may be classed into two groups: (1) The states and territories in which settlement is very recent, and especially those in which mining and stock raising are more important industrially than agriculture; (2) A considerable number of the Southern States. Delaware and Ohio are exceptions, falling in neither class. In the first group, the number of banks is as yet few, and the matter has not yet been deemed of importance. On the contrary, there are in the South, a large number of state banks, and it is the non-existence here of supervision which practically keeps it from covering nearly all the state banks in the country. Of the 1,100 banks which are not examined, over [illegible] are located in this section. The cause of this lack of government oversight is not to be found in any peculiarities of the banking systems in these states, although it is possible that the use of special charters continuing here later than elsewhere may have somewhat retarded the development of systems of supervision, but that this cannot be the fundamental cause is shown by the fact that North Carolina and Georgia both began the examinations of banks while using special acts of incorporation, and that some states, such as Mississippi and Arkansas, which have had the general act as the exclusive plan of incorporation for a considerable time, have not yet developed any [illegible]-

fective supervision. A truer explanation would probably be found in the general legislative tendencies of the Southern people. In no section of the country has there been less control of private business by the state governments than in the South. The policy of laissez faire has been, until recently, consistently pursued. There are signs, however, that a movement toward bank supervision is in progress. The constitution of South Carolina adopted in 1895,[1] and the Louisiana constitution of 1898,[2] both provide for the appointment of state examiners.

One noteworthy improvement on the national system has been made in several states in the method of paying bank examiners for their services. A national bank examiner is paid entirely by fees.[3] In his report for 1887, the Comptroller of the Currency says, "From many points of view, it would be expedient for the examiners to be paid out of the tax on national banks, and not by fees. The present system establishes relations between the bank and the examiner which are inconsistent with the functions of that officer, and with what ought to be his attitude toward the bank."[4] There is also the further objection to

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1. Art. IX, sec. 9; also Laws of 1896, No.48. For some reason, however, this law has been inoperative, and there is as yet no bank examination in South Carolina.
2. Art. 194; also Laws of 1898, Art. 198.
3. Revised Statutes of the U. S., sec. 5240.
4. Page 9.

the fee system that it makes it to the interest of the examiner to make his inspection as rapidly as possible, since the amount of his earnings depends on the number of banks he examines. Various methods have been used in the different states to overcome this defect. The most common has been to require the banks to pay fees to the state treasury, and examiners are paid an annual salary. This is the case in Michigan,[1] Oklahoma,[2] Wisconsin,[3] North Dakota,[4] Missouri,[5] and Minnesota.[6] In other cases, the expenses of supervision are assessed on banks, usually in proportion to capital or deposits. This method is followed in New York,[7] California,[8] and Georgia.[9] The examiners are regarded as state officials, and are paid by salary, but it is considered just that the banks should pay all or part of the expenses. There are some states, usually those in which banks are few, where some state officer having other and more important duties is charged with bank supervision, and no fee is imposed on the banks, the state paying all expenses. It may be said in general that nearly all the states in one way

1. Michigan, (1887) Art. 205, sec. 40.
2. Oklahoma, (1889) chap. 4, sec's 25, 26.
3. Wisconsin (1891) chap. 295, sec. 7.
4. North Dakota, (1893) chap. 23.
5. Missouri, (1897) page 83.
6. Minnesota, (1893) chap. 41, sec's 1, 2.
7. New York, (1882) chap. 409.
8. California, (1878) p. 740.
9. Georgia, (1889) p. 65.

or another have avoided the evils of the fee system.

If then, by examinations or reports, it is disclosed that the bank has an impaired capital, is violating the laws, or is insolvent, what power is given to state officials to take action? In the case of minor infringements, it is usually required that notice shall be given, but if this proves ineffective, the proceedings for insolvency must be taken. It is here that a radical difference appears between the state and national systems. In ~~all of~~ the state laws, the courts must be applied to for the appointment of a receiver,[1] while the Comptroller of the Currency has power, without the intervention of judicial procedure, himself to appoint a receiver, who acts under his direction. The final power, then, to regulate state banks rests with the law courts, while national banks are under the control of the Comptroller. The one is a judicial, while the other is an administrative system. Receivers for all other corporations are judicial officers, and the legislatures of the states have been unwilling to distinguish, in this respect, banking from other corporations. Before the passage

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1. The state official is not always authorized to apply for a receiver. In Wisconsin and Louisiana, publicity is relied on; the bank continues, but the people are warned by publication of its condition. The Bank Examiner of West Virginia reports to the Board of Public Works, who have power to revoke its charter. The State Examiner of South Dakota simply reports to the Governor.

of the national bank act, the appointment of bank officers was, in all the states, in the hands of the courts. The circumstances surrounding the national act made it necessary to entrust this power to the Comptroller. It was felt that only the courts of the United States could be used, and as these were difficult of access, and a longer time would be consumed in securing the necessary decrees than was considered safe, it was thought best to give the Comptroller this power.[1] There is then no judgment passed on the question in the national system, the Comptroller's decision is final. No room is left for any contest on the part of the bank.

As soon as state supervision became well organized, it became apparent that the appointment of receivers by the courts failed to meet the needs of the case in an important particular. In the time which must necessarily elapse before action could be taken by a judge, assets were frequently misapplied by the directors. Arrangements were entered into which seriously diminished the fund from which depositors were to be paid.

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1. It is of interest, in this connection, to note that the power of the Comptroller of Currency to appoint receivers has been broadened from time to time. In 1870, he was authorized to place receivers in charge of banks with impaired capitals, and it was not until 18[illegible] that this power was given in cases of insolvency. Even at the present time, in order to correct some violations of law, resort must be had to the courts for a dissolution of the corporation.

[illegible] states, it [illegible] an injunction or forbidding the bank to carry on business or to transfer its assets.[1] It required time to secure even an injunction, and it is desirable that action should be speedy. This would, however, without any doubt, have been the direction which the state legislation would have taken, if it had not been for the example of the national bank act. The plan adopted was to confer on state officials the power to take charge of a bank immediately, and hold its assets until a receiver is appointed, or the application refused.[2] This authority, in mose cases, has been given somewhat later than the power to apply for a receiver, and may be considered a movement in the direction of a more administrative system.

1. The New Jersey act of 1889 for bank examination follows the old method, and may be taken as an example. It runs, "Whenever it shall appear as the result of examination that the affairs of any such corporation are in an unsound condition...or that it is transacting business....in violation of law, it shall be the duty of the Attorney General, on notice by the Commissioners, to apply forthwith, by petition or bill of complaint or information, to the Chancellor for an injunction restraining such corporation from the transaction of further business, or the transfer of any portion of its assets in any manner whatsoever, and for such other relief and assistance as may be appropriate to the case; and the Chancellor, being satisfied of the sufficiency of such application, or that the interests of the people so require, may order an injunction, and make other appropriate orders in a summary way. N.J. 1889, p.368, ch.CCXXIV.

2. In some states, there is a slight control over receivers by the state bank officials. In Michigan, dividends are distributed under the order of the State Bank Commissioners, and insolvent banks, in a few states, are examined periodically, but it may be said in general that the administration of assets is an exclusively judicial duty. Even statistics of insolvent banks are printed in only a small number of reports of state bank officers.

Table Showing [illegible] of State Bank Supervision

	Required Reports begun	Req. Examinations begun.	Power conferred on state officials to [illegible]	Power conferred on state officials to take possession of bank pending appointment of a receiver
...ne	ante bellum	ante bellum	ante bellum	
...Hamp.	" "	" "	" "	
...mont	" "	" "	" "	
...ss.	" "	" "	" "	
...de Is.	" "		" "	
...n.	" "	ante bellum	" "	
...-York	ante bellum	18[illegible]4	ante bellum	1[illegible]
...Jersey	" "	18[illegible]1	18[illegible]1	1[illegible]11
...aware	" "			
...ryland	1870	187[illegible]	187[illegible]	[illegible]
...enn.	ante bellum	[illegible]	[illegible]	[illegible]
...ginia	1884			
...Va.	[illegible]	[illegible]		
...C.	1[illegible]7	[illegible]1	[illegible]9	
...C.				
...orgia	[illegible]1	[illegible]	[illegible]95	
...labama				
...uisiana	[illegible]	[illegible]		
...lorida	[illegible]	[illegible]77	[illegible]	

Table Showing Growth of Present Status of State Bank Supervision (con.)

	Regular Reports begun.	Regular Examinations begun.	Power conferred on state officials to apply for a receiver.	Power conferred on state officials to take possession of bank pending appointment of a receiver.
ussippi	1888			
as				
ansas				
essee				
ucky	1870			
o	ante bellum	1873	1895	1895
ana	" "	1887	1887	1887
nois	" "	1887	1887	1893
igan	" "	1895		
nsin	" "	1891	ante bellum	1897
a	" "	1878	1889	1881
esota	" "	1895	1895	1895
ouri	1877			
sas	1891	1891	1891	1891
aska	1877	1889	1889	1895
akota	1890	1893	1893	1893
akota.	1891	1891		
homa	1897	1897	1897	1897
ana	1887	1895	1899	1891
ming.	1888	1888	1895	1895
ado.	1877			
Mex.	1884			

Table Showing Growth & Present Status of State Bank Supervision.

	Regular Reports begun	Regular Examinations begun	Power conferred on state officials to apply for a receiver.	Power conferred on state officials to take possession of bank pending the appointment of receiver.
hington	1885			
gon				
fornia	1878	1878	1878	1895
aho				
ah	1888			
vada				
zona	1893	1893	1893	

REAL ESTATE LOANS.

There is no more characteristic difference between the state and the national banking laws than the fact that almost without exception, state banks may loan on real estate security, while national banks are prohibited from doing so. In the antebellum state laws, in only a few cases were the banks prohibited from loaning money on landed property. As long as banks were chartered under the general corporation law, they had power to make loans on every form of security, and in the transition to a differentiated law, it has seemed wise to the legislatures of the various states to allow them still the same freedom. In some cases, where the influence of the national act has been strong enough at the outset of state bank regulation to secure the insertion of the prohibition against real estate loans, it has

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1. Revised Statutes of the United States, sec. 5137.
2. The only exceptions are Ohio, ~~New York~~, Oklahoma, Colorado, and New Mexico.

later been found [illegible], after some experience, to [illegible] the law in this respect.

While it cannot be said that there is to be found in the legislation regarding state banks any tendency to follow the national law in its prohibition of real estate loans, there has been, in a few states, a movement toward placing a limit on the amount of such investments. The law recognizes the propriety and safety of such business, but also endeavors to keep it within bounds. Thus, by the South Carolina law, not more than one-half of the capital and surplus may be loaned on mortgage of real estate.[2] Similar restrictions are imposed by the laws of North Dakota,[1] South Dakota, and Michigan.[3] The most elaborate provision on the subject is that contained in the Wisconsin act of [illegible], in which it was enacted that "no bank should loan to an amount exceeding twenty per cent of its capital stock upon mortgages or any other form of real estate security, except on the adoption of a resolution by a two-thirds vote of the board of directors, specifying some larger amount which its officers might loan upon real estate security; provided that in no event

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1. North Dakota ([illegible]) ch. 28; South Dakota (1893) ch. [illegible].
2. South Carolina (1887) No. 427.
3. Michigan ([illegible]) Act [illegible], Sec. [illegible]. Under the provisions of the Michigan law, no real estate loans can be made until there has been passed, by a two-thirds vote of the directors, a resolution stating the extent to which such loans may be made. The amount shall in no case be more than [illegible] per cent of the capital of the bank.

should any bank to loan an amount to exceed twenty-five per cent of its capital, surplus, and deposits, and provided that banks doing business in villages or cities having less than fifty thousand inhabitants under the last official census, might loan a sum not to exceed thirty-three and one-third per cent of the aggregate of its capital, surplus, and deposits upon real estate security."[1] With the exception of these states, and of those in which real estate loans are entirely prohibited, the amount of such investments is left entirely to the discretion of officers of state banks.

Real estate security, as a basis for bank loans, has been quite generally condemned by writers on the subject of banking. Mr. Horace White says, "The reason why lands and buildings ought not to form the basis of the loans of a commercial bank is that they are not quick assets. The liabilities of the bank being payable on demand, the assets must be converted into money within short periods. When real property is given as security for a debt, both borrower and lender look to it, and not to the personal obligation, as the source of payment."[2] It will be

1. Wisconsin (1897) ch. 30[illegible], II, sec. 23. This law was strenuously opposed in some quarters on the ground that it did not provide sufficiently for real estate loans, and it was largely owing to this feeling that it was defeated by the popular vote. (Fifth Annual Report of the Bank Examiner of Michigan, p. IX.)

2. "Money and Banking," page 409.

noticed that this theory is predicated on the assumption that the deposits are demand liabilities, and it is one of the salient features of state banking that a large part of the deposits are time liabilities. It is not possible to ascertain for all the states what proportion time deposits bear to those payable on demand, but the following table shows the relation in a few typical states:

	Demand Deposits.	Time Deposits.[1]
Wisconsin (1899) Dec. 2,	$19,803,760.83	$23,873,040,79
Louisiana (189[illegible]) Dec. 31,	$12,280,772.58	$ 4,092,688.59
Kansas (1898) July 14,	$19,553,081.17	$ 2,[illegible]41,[illegible]75.14
N. Carolina (189[illegible]) Sep.20,	$ 3,822,990.44	$ 389,560.88
Missouri (1899) Aug. 22,	$62,980,924.93	$15,469,[illegible].[illegible]
Mississippi, (189[illegible]) June 30,	$ 9,031,[illegible]82.28	$ 797,100.1[illegible]
New Jersey (189[illegible]) Dec. 2,	$ 8,711,107.52	$ 39,044.83
Indiana (1897) Oct. 20,	$ 9,848,6[illegible].15	$ 1,0[illegible].79
Illinois (189[illegible]) Dec. 4,	$94,223,716.40	$1[illegible],[illegible],[illegible].[illegible]

In the development of a community, there is a period when the functions of a savings bank and of a commercial bank are united in one institution, which has time liabilities as well as demand deposits. In an agricultural section, these functions continue united, and the bank is a place of investment

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1. Savings deposits are excluded from these figures, and only deposits on time certificates.

for a portion of its patrons.[1] It seems perfectly safe that such a bank should have power to loan on real estate security. As industrial life develops, differentiation sets in, and two kinds of banks [illegible]—savings or investment banks, and banks of discount and deposit. It will be noticed in the preceding table that the state banks in New Jersey have practically no time deposits. In other words, the separation of the two classes is complete in that state.

The national banking act, as has been said before, was not designed to cover the needs of the country for banks of discount and deposit, except in so far as those needs might be incidentally filled by banks primarily intended as a means of note issue. It was supposed that banks with $50,000 capital would be located in places where they would have no time or savings deposits, and it was for such banks that the prohibition against real estate loans was designed.[2]

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1. Time deposits are usually made in large sums, and so differ from savings deposits, which are generally accumulated by degrees, but their fundamental similarity for the purposes of this discussion, consists in the fact that both kinds are regarded as investments, and consequently, are not demand liabilities.

2. There is a growing disposition to regard a reasonable amount of real estate loans as safe for a bank carrying only demand deposits. In most cases, a mortgage, if well secured, is quite as convertible as stocks and bonds, on the security of which all national banks freely loan. See, for recent discussion, Banker's Magazine, Vol. 54, page 12 (editorial).

Other things being equal, the larger the town, the more complete is the separation of savings and commercial banks,[1] and consequently, the less ought to be the investment in real estate securities. This is the principle adopted in the Wisconsin act of 1897 mentioned above, and it undoubtedly ought to form the basis for any legislation, as to the amount of real estate investments which a bank may make. There is reason, however, to believe that self interest will cause this to come about without any legislation. In smaller places, real estate loans yield as high a rate of interest as any other investment, but in cities, the rate of interest obtained on commercial loans is higher than that which can be gotten by loaning on land, and consequently, banks will loan on personal and collateral security by preference. An interesting analysis recently made by the Bank Examiner of Wisconsin shows that it is in this way the matter works itself out. He says, "A classification of the loans and discounts indicates that $31,012,220.37, or 77 and 99 - 100 per cent of this class of assets, consists of paper with or without other personal security, and $8,749,881.51, or 22 and 1 - 10 per cent, on mortgage or other real estate security. By a further classification of the real estate loans, it

1. While, in many of the states, especially in the Middle West, the same institutions in the larger cities carry on both kinds of business, they are kept distinct.

may be noted that in cities of more than six thousand inhabitants, real estate loans constitute 8 and 26-100 per cent,[1] and in towns and cities of less than six thousand inhabitants, 13 and 91-100 per cent of the aggregate capital, surplus, and deposits."[2] Likewise, the real estate loans made by state commercial banks in San Francisco are only 11 per cent of the total loans and discounts, while in the state banks outside San Francisco, they are over one-third.

There seems, taking the average, no disposition on the part of state banks to lock up any large part of their funds in real estate securities. Unfortunately, such investments are not separately classified in many of the state bank reports, but the following statistics are probably typical:

	Real Estate Loans.	All Other Loans.
California (1898)	$19,191,211.35	$54,747,07[illegible].61
Kansas (1898)	$ 1,071,033.22	$16,477,473.35
Missouri (1898)	$ 7,119,092.36	$64,[illegible],[illegible].41
Louisiana (1899)	$ 2,216,905.16	$10,397,10[illegible].36
North Carolina 1899	$ 713,353.10	$ 4,[illegible],3[illegible].3[illegible]

There may, however, be individual cases where the directors of a bank will exceed reasonable limits in this respect, and it

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1. Since all the savings banks in Wisconsin are "state banks" except one, the amount of real estate loans made against demand deposits must be practically none.

2. Fifth Annual Report of the Wisconsin Bank Examiner ([illegible]), p. IX.

would appear to be in accordance with the general theory of bank regulation that the amount of such loans should be limited.

The permission to loan on real estate loans is profitable to the state banks. In many communities, there is not enough commercial paper to employ the banking capital, and if banks are restricted to that form of investment, a large portion of banking funds would lie idle, and just so much revenue would be lost to the banks. There is reason to believe that the national banks in the South and West, although located mostly in the larger places, labor under this disadvantage.[1] According to the report of the Comptroller of the Currency for 1899, reserves were held at various dates as follows:

	Feb. 4,	Apr. 5,	June 30,	Sept. [illegible]
Central Reserve Cities,	28.0	26.4	25.6	25
Other Reserve Cities	36.6	33.5	31.6	30.[illegible]
Country Banks				
New Eng. States	31.7	30.	27.4	27.9
Eastern States	31.4	30.3	28.6	29.2
Southern States	36.9	34.9	32.1	30.
Middle States	35.[illegible]	33.9	33.8	33.9
Western States	37.4	37.[illegible]	40.4	40.3
Pacific States	36.0	38.2	38.4	39.0

1. It is a well known fact that the national banks frequently evade the law against real estate loans by having the mortgages made to some of their officers or directors.

The theory on which the national law rests is that reserve and central reserve cities should carry larger reserves than country banks, while as a matter of practice in the greater part of the United States, the opposite is the case. The Western states deserve especial attention in this connection. It is in this group that, outside of the New England, Eastern, and Middle states, national banks are most widely diffused. Here, there are many national banks in the smaller towns,[1] and it is here that reserves reach the abnormal height of forty per cent. It is not to be supposed that the average of a number of banks will show a reserve anything like so low as the legal minimum, but it is evident that when New England banks can use their funds so that they only keep about thirty per cent of reserves, while banks in the West must keep forty per cent, ~~that~~ there are important differences in the loans which can be made in the two sections. Very large reserves are by no means desirable. They are a standing temptation to unsound banking; to the taking of highly hazardous risks. They increase the cost of bank-

1. There seems a strong probability that the unsuitability of the national bank to local needs was a ~~strong~~ factor in the Western "boom" of 1889 - 1892. A large part of their capital was raised in the East, and was, in many cases, out of all proportion to the business of the place in which they were located. Being restricted from taking mortgages on real estate, they were forced, in order to employ their funds, to enter on highly speculative undertakings.

ing, and consequently, makes the interest rate high. If the revenue of the banks is diminished, the rate paid by borrowers must, in the long run, be high enough to make up for that loss.

It would be of interest to know for what length of time loans on real estate security are usually made by the banks. No statistical data bearing on this point can be obtained, but it is probable that a large part of such loans are for a year or more. There is a great need in agricultural sections for loans to cover the time of production. At present, the banker is largely deterred from entering this field by the cost of examining titles and drawing mortgages. The expense is so great, considering the length of time the loan is to run, that credit is usually obtained from the merchant. Especially is this true in the South, where a large part of agricultural credit is thus furnished. This is the legitimate field of the banker, and if a system of real estate registration should be generally adopted (e.g., the Torrens, or a similar system), by which the mortgaging of real estate would be safe and inexpensive, there can be no doubt that the banks would permit such credit, both to their own and to the farmer's advantage. A considerable part of real estate loans are some in which the mortgage is only a collateral security. The bank looks primarily to the personal

credit of the individual, but is further protected by an assignment of a mortgage. In many communities, real estate mortgages are an important form of investment, and just as in other sections bonds and stocks are pledged as security for a loan, so here, mortgages are so used.[1]

However profitable to the bank or economically beneficial to the community loaning on real estate may be, the final test which such a policy must meet is its effect on the safety of the bank. It would be difficult to find anywhere in the literature of state banks any opinion to the effect that such loans, to a moderate amount, tend to cause insolvency. On the contrary, the opposite view is frequently expressed.[2] Whatever the theory may be on the subject, as a matter of practice, no complaint is made against real estate loans.

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1. The Comptroller of the Currency, in his report for 18[illegible] (page [illegible]), recommended that the national banking act be amended so as to allow this.

2. "In some sections, it has not been easy to employ the bank's funds without taking occasional real estate loans. This class of loans is, in some communities, the best paper offered. .....Of course, banking institutions have failed, having among their assets large holdings of so called real estate paper, however, where I have found opportunity to investigate such failures, I have uniformly found that the cause of the failure was not security, -real estate or any other, but the lack of it." Essay by J. P. Huston, read before the Missouri State Bankers' Association, 1897. Bankers' Magazine, Vol.56, p.[illegible].

STATUTORY LIABILITY OF STATE BANK STOCKHOLDERS.

Under the common law, stockholders in a corporation incurred no liability in the event of insolvency. There has gradually grown up in the courts of the various states what is generally known as the "Trust Fund Doctrine," under which it has been held that unpaid subscriptions to capital stock form a trust fund for creditors, and may be collected. The judicial view has been incorporated in the statutes of most of the states, until, at the present time, this doctrine may be said to be a universal rule of law in the United States. Since, however, as has already been shown, the laws in nearly all the states require stock in a banking corporation to be fully paid up either before active operations begin, or within a short time afterwards, the question of liability for unpaid subscriptions has become of little importance, so far as banking companies are concerned, except in a few states. In Wisconsin, Georgia, Alabama, West Virginia, and Washington, a minimum capital of $25,000 is required for banks, but only a part of it need be paid in. The same principle was applied in the Missouri and Kansas "savings bank" laws of 1864 and 1868 respectively. Such provisions only affect the liability of stockholders in banks with a smaller capital than the required minimum. The laws say, in effect, that banks having less than a certain capital need special regulation, and aim to secure it by imposing an additional liability

on the shareholders. There seems, however, no [illegible] of legislation of this character. The small bank is no longer an experiment, nor can it be shown that it needs special safeguards.

While the liability for unpaid subscriptions has been one of diminishing importance as banking has been differentiated from other corporations, the opposite has been the case with respect to "statutory liability," i. e., the liability of stockholders beyond the amount of the capital stock held by them. It was early recognized that banks occupied a peculiar position, differing widely from other corporations in the fiduciary relations which they maintained to their creditors. It was thought just, therefore, that their stockholders should be charged with heavier liabilities. The first laws for the regulation of banking proceeded in this respect as in others on the principle that it was the note holder alone who was to be protected. Thus the [illegible]ium laws of Maine[1] and Massachusetts[2] imposed the statutory liability only for the benefit of the creditors who held the bills of the bank. In later legislation, the liability was restricted to stockholders in banks of issue,[3] but was for the advantage of all creditors. By the time of the Civil War, it

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1. Maine (1841) ch. 1, sec. [illegible].
2. Mass. (1828) ch. 96, sec. 13.
3. Constitution of N. Y. (1845) Art. 8, §7; [illegible] (1850) P. L. 477, sec. 24.

had assumed the form which it now possesses,--a liability to the amount of the stock in addition to the stock. It has therefore become known as a double liability.(1) With the destruction of state bank issue, and the consequent cessation of state regulation of banks, the liability of stockholders in banks tended to become the same as that of stockholders in other corporations. With the realization of the fact that the depositor was entitled to banking regulation, came the renewed imposition of double liability as a part of the general scheme of banking legislation,(2) until at present, the double liability is imposed in nearly all the states(3) where state banking assumes any great importance.(4)

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1. In a few states, Kentucky, Kansas, Minnesota, and Ohio, the double liability is imposed on the stockholders in all corporations. In California, they are chargeable with their proportionate part of the debts, and under the Indiana law, while not responsible for unpaid subscriptions, they are liable for a sum equal to the stock held by them. With these exceptions, the liability in the United States in other than banking corporations is usually a single one.

2. In Georgia, the liability is for the exclusive benefit of depositors.

3. The list includes: Rhode Island, Pennsylvania, New York, Maryland, West Virginia, South Carolina, Florida, North Carolina, Kentucky, Louisiana, Kansas, Nebraska, North Dakota, South Dakota, Oklahoma, Michigan, Minnesota, Wisconsin, Iowa, Illinois, Ohio, Indiana, Wyoming, Colorado, Utah, New Mexico, Washington.

4. The most notable exceptions are California (see note 1) and Missouri, whose constitution (see Art. XII, sec. [illegible]) restricts liability to "the amount of stock owned." Some Southern States, notably Virginia, Mississippi, Louisiana, Tennessee, lack this feature of banking regulation. They are states having in this, as in other respects, the undifferentiated general corporation law.

It cannot be said that as yet the "statutory liability" in the state systems has proven of very great efficiency as a protection against loss. While it is impossible to cite statistics on this point since none are in existence, an examination of cases adjudicated under such laws shows that very little benefit accrues to the depositor from such provisions. As yet, little has been done in state legislation to make the liability efficacious, but there has been a slight movement in that direction sufficient to indicate the reasons for the failure to produce the results intended, and to point out the way which future remedial legislation will probably take.

In the first place, it has long been held by the courts that the statutory liability is directly to the bank's creditors and not to the bank itself as a corporation. In this respect it differs from an unpaid stock subscription, which is held to be an asset of the bank, and collectible by it before its insolvency. As a consequence of this view, it has been held that in the absence of statutory provisions, the receiver of a failed bank, who succeeds to the rights of the corporation, can collect an unpaid stock subscription, but cannot enforce the statutory liability, since it is not an asset of the bank.(1) There are two dis-

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1. The only state in which the courts have held an opposite view is Washington; Watterson vs. Brown, 13 Wash. 676.

[illegible] lines of decisions as to the method which creditors must adopt in order to secure the payment of the liability. The first is to the effect that the remedy is by an action at law. In such a suit, the creditor sues for himself, some one or more of the stockholders of the bank. The creditor who first brings suit obtains a favored position with respect to others. This was the method followed under the New York antebellum law for some years.[1] The objection to the law action is that the proceeds of the liability should be divided among all creditors, and one should not be permitted to get, by superior diligence, a more than proportionate share of whatever may be collected. In a struggle for priority, creditors for small amounts fare badly. Another objection to the remedy at law lies in the fact that suits are multiplied. Each creditor must maintain a separate suit. In a very early case in Massachusetts,[2] it was held that the suit at equity was the proper proceeding, since in this way, all parties could be joined in one action, and the proceeds might be distributed proportionately. The equitable remedy has proven so slow and costly in practice,[3] that it affords little

1. Bank of Poughkeepsie vs. Ibbotson, 34 Wend 473

2. Crease vs. Babcock, 10 Metcalf 123.

3. The Ohio Supreme Court said, "By reason of the great number of stockholders, the frequent transfers of stock, the decease of parties, and of other causes, delays, vexations, expensive and almost interminable seem to be inevitable in such proceedings, so much so that this liability has grown to be looked upon as furnishing next to no security at all for the debts of the bank." [illegible] Ohio St. 318.

security to the creditor, although more than the action at law, it seems in harmony with the general trend of banking legislation which is toward putting all creditors on an equal footing,(1) and it has been widely adopted by the courts as the preferable remedy.

The impracticability of leaving the liability to be enforced by creditors was recognized in the antebellum banking laws of several states. The New York act of 1849 gave the receiver of an insolvent bank the power to enforce the liability. The same thing was effected in Massachusetts(2) and Maine(3) by somewhat later statutes. The national bank act contains the same provision. In most of the states, however, the liability was enforceable until quite recently exclusively by the creditors. It has only been since the revival of state bank regulation that any improvement has been made in this respect, and the tendency is to continue the earlier line of development, and transfer the right to collect the liability to the receiver.(4) There seems a gener-

1. This tendency is seen in the prohibitions of executions and preferences contained in the national bank act and several of the state laws, the design being to have assets divided proportionately between creditors.
2. Mass. ([illegible]) ch. 167, sec's 1, 2.
3. Me. (1855) ch. 164.
4. Such laws are,

N. Y. (1897) ch.441.
Neb. (1895) ch.8, sec.35.
Kan. ([illegible]) ch.10, sec.14.
Ia. (18 G.A.) ch. [illegible].
Wis.(1897) ch.303,I,sec.7. This act was defeated, however.
Minn.(1895) ch.[illegible], sec.[illegible].
Mich.([illegible]) Act 205, sec.46.

al consensus of opinion that the receiver can collect the liability more cheaply and quickly than the creditors can.(1)

Unless there are statutory provisions to the contrary, it is a general rule of law, with few dissenting decisions, that the statutory liability is a secondary, and not a primary, one. The stockholder is not responsible to the creditor as a principal, but only after the assets of the corporation have been exhausted. The liability cannot be enforced until it has been ascertained, and it is necessary, therefore, that the affairs of the insolvent corporation shall be well advanced toward settlement, before the amount due can be ascertained. Usually, therefore, a considerable time must elapse before any action can be taken which will bind the property of the shareholder. In the meanwhile, it frequently happens that the liability can be evaded by the transfer of property.(2)

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1. The Supreme Court of Washington, in Watterson vs. Masterson, 15 Wash. 511, said, "If any proof had been needed that the method pointed out in that opinion for enforcing the contingent liability (i.e., by receiver) was demanded by public policy, and was in the interest of all classes interested in the bank, such proof is furnished by the record in this case. After great expense, and the waste of much time for the purpose of establishing the facts necessary to authorize the enforcement of the liability in behalf of creditors against stockholders, such creditors were in no better condition than the receivers were before they had commenced this proceeding."

2. The same difficulty in the enforcement of liability was evidently felt in the antebellum systems. The appointment of a receiver in Maine constituted a lien on the real estate of stockholders to the amount of their liability. With the great increase in personal property proportionately to realty, it is doubtful if such a provision would now afford very much help.

An efficient way of remedying this defect is to declare the liability a primary one, accruing immediately on the insolvency of the bank. It is probable, however, that passage of such laws would bring about more evils than they would cure. When a bank failure occurs, there is always a check to the business of the community. A partial paralysis seizes its industrial life. At such a time, to proceed at once to collect the full liabilities of stockholders would prove a very great impediment to the rapid recovery of normal industrial activity. If insolvency of the bank imposes a lien on the property of the shareholders, much the same effect would be produced. The power of readjustment would be crippled at the very time when there is most need of it.

Despite the inconvenience of holding the liability a primary one, there has been some movement in that direction. Thus, in Nebraska, it was enacted in 1895 that "such liability shall be enforced whenever such banking corporation shall be adjudged insolvent, without regard to the probability of the assets of such insolvent bank being sufficient to pay all its liabilities." (1) In

(1) L. Neb. (1895) ch.8, sec.30. On account of constitutional provisions peculiar to Nebraska, this section is unconstitutional. Farmers Loan & Trust Co. 49, Neb.3[illegible]3. State vs. German Savings Bank 50, Neb.735. The Neb. Court recognized, however, the motive leading to the passage of the act. It said, "The policy of the statute is to afford a speedy and somewhat summary remedy for creditors of insolvent banks, and to enable the receiver for their benefit to promptly enforce all liabilities of stockholders; ...the danger attending upon any process requiring re-

the interpretation of the Iowa statute, the Supreme Court has held that the liability created is primary, and it is not necessary to exhaust assets before enforcing it, but the assessment might be for the full amount, and any surplus remaining after the complete settlement of the trust, may be refunded.[2] The same view is taken of the statutes in California[3] and Wisconsin.[4] As yet, however, the old doctrine requiring the previous exhaustion of assets is little touched by statutory innovations.

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curities to be [illegible] sold often on a falling market at a sacrifice, or if that danger be avoided, the still greater danger of delaying resort to proceedings against stockholders until such a time that by death or insolvency the remedies become ineffectual......We may further acquiesce in the position of counsel that for the effective winding up of insolvent banks, and the protection of depositors, a remedy against stockholders should be permitted before, by the slow process of liquidation, other assets shall have been exhausted. State of Nebraska vs. German Savings Bank, [illegible] Neb. [illegible].

1. Iowa (18 G.A.) ch. 208.

2. The Court said in the case of State ex rel Stone Att'y General vs. Union Stock Yards Bank, "The liability for the payment to create the fund is not made to depend on the application of the fund, but on the fact of insolvency," "The liability is primarily for the full amount, subject to such an interest as will entitle him to any balance unexpended." 70 N. W. 772.

3. Morrows vs. Superior Court, 64 Cal. 383; Hyman vs. Coleman, 82, Cal. 650.

4. Booth vs. Dear, 96 Wis. 516.

STATE BANK FAILURES.

The final test of the safety of any system of banking is to be found in its statistics of insolvencies. The aim of legislation is to reduce the number of bank failures to a minimum, and, when they do occur, to procure the payment of a maximum percentage of claims. Unfortunately, the data in the case of state banks is of such a character as to make it impossible to reach any very definite conclusions. The states, as has been said, have been reluctant to give the officers charged with the execution of the banking laws any control over failed banks, and it is in only a few states that any official statistics have been procurable on the subject.

Various attempts have been made by the Comptroller of the Currency to procure information on this point. In his report for 1879, Mr. Knox summarized the results of an investigation into failures of state, private, and savings banks occurring during the three preceding years. The number of such banks failing in that period was 210, and it was estimated that 60 per cent of the claims would be paid.[1] The eighty-one national banks which failed prior to 1879 had paid a slightly smaller percentage of claims, but the national system showed a much

1. Report of Comptroller of Currency, 1879, page 55.

lower percentage with respect to the number of failures. It must be borne in mind that these figures class together state, private, and savings banks in such a way that the statistics for each class separately cannot be ascertained. At that time, of 4,312 banks other than national in existence in the United States, only 1,005 were state banks.[1] Consequently, these figures prove very little as to banks in the state system, unless it is assumed that state, private, and savings banks fail at the same rate.

In 1895,[2] the Comptroller undertook another investigation of similar character to that of 1879, and in 1896, the inquiry was continued. The banks reported as having failed, were not separated into classes, but were grouped together as "banks other than national." It was found, that as far as could be ascertained, 1,234 banks of this character had failed since 1863, and that they had paid under fifty per cent of the claims against them.[3] Another inquiry into the same subject, but confined to the question of the percentage of claims, was made by the Comptroller in 1899;[4] it was found that 282 state, private, and savings banks failing between 1893 and 1899, had paid 56.19

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1. Report of Comptroller of Currency, 1879, p. 57.
2. Id. 1895, p. 29.
3. Report of Comptroller of Currency, 1896, p. 52.
4. Id. 1899, p. 648.

per cent of all claims against them.[1] Evidently the statistical information contained in the Comptroller's Reports, as far as we have yet examined, is useless for our purpose, since there is no possible way of separating state banks from other classes. There has sometimes been a failure to recognize this fact, and erroneous statements as to the relative safety of the state and national systems have resulted. In the report of the Monetary Commission, the argument runs thus: "The total number of national banks which have failed since the establishment of the system was, at the end of 1897, 352 or 6.9 per cent of the 5,085 which had been organized. As against this, 1,234 failures of state banks are known to have occurred in the same period. The total number of state banks in operation during the year [illegible] - 1896 was 3,708, adding the 1,234 failed banks, a total of 4,942 is obtained, and though a certain number have doubtless gone into liquidation, or for some other reason do not appear in these figures, it seems safe to say that probably about twenty per cent of the total number of state banks organized during the period in question have failed. This would be a percentage nearly three times as high as that of the national banks which failed during the period."[2] The error made, con-

1. The number of failures in these years was more than [illegible], but only for these was the information as to claims procurable.
2. Report of Monetary Commission, p.

right in considering the whole 1,[illegible] failures as those of state banks, while that number includes private and savings banks. The word state bank is used in the Comptroller's report, but synonymously in this case with "bank other than national." The two expressions are used interchangeably, and it is highly probable that some of the bank examiners, who reported these insolvencies, may have been misled into returning only "state bank insolvencies" properly styled. There is abundant internal evidence, however, that private banks are considered by the examiners within the scope of the report. For example, Indiana is reported as having had 77 failures since 1863, while from reports to the State Auditor, it is certain that the number of state bank failures since 1873 has not exceeded twelve, and before 1873, there were practically no state banks in Indiana. Whether all failures of private banks are included in the table is uncertain, but certainly the most of them are. If, therefore, we wish to ascertain the percentage of failures, we must take into account not only "state" banks, but private and savings as well. According to the report of the Commissioner of Internal Revenue for [illegible], there were, in the United States, about 9,[illegible] banks other than national. If we take this number as a basis for our calculation of percentage, we shall come nearer the truth. Allowing for insolvencies and

banks gone into liquidation, it would be safe to say that since 1863 there have been in operation in the United States at least 14,000 "banks other than national." This would give us a percentage of failures of something over eight, which is in excess of that of national banks, but very far from being three times as great. In fact, it may be doubted if any system of banking in this country, even in an entire absence of regulations, would show any such rate. Regulation of the banking business is undoubtedly helpful in keeping down the rate of insolvencies, but to suppose that, if banks were left to go with a free rein, they would treble the rate of failures, is to overrate the value of government oversight, quite as much as it has been customary to undervalue it.

So far, we have been unable to reach any conclusions even as to the rate of failures, except that it is not anything like double that of national banks, but fortunately, we have still another source of information as to state bank insolvencies. Since 1892, the Bradstreet Company has furnished the Comptroller annually a table, showing by states all failures of banking concerns in the country. The banks are classified into state, savings, and private. It is believed that this

table, which is here inserted, as compiled from the Comptroller's reports, forms the most accurate body of information obtainable on the subject.1

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1. The statistics of assets and liabilities given, are, from the nature of the case, merely estimates, and are not included in the table. The statements as to number of failures have been compared, wherever possible, with returns of insolvencies in official reports, and, with an exception noted below, found to be highly accurate. Since the method of collecting the returns used by Bradstreet's is the same everywhere, it seems probable that, taken as a whole, the reports are accurate.

Maine						1			1
N.H.						1			1
Vt			1						1
Mass.									
Conn.									
R.I.		1							1
[illegible]		1	1			2			4
N.Y.	1	4	2	1		2			10
Penna.		2	1						3
N.J.		1							1
Md.									
Del.									
Total	1	7	3	1		2			14
Va.		5							5
[illegible]									
N.C.		2							2
S.C.									
Fla		1	2						4
Ga.		3				2			5
Ala.		1						1	3
Miss	1								1
La.	1				2	1			4
Texas.	1					1	1		3
Ark		2			2				5
Tenn	3	5	2	1					11
Ky.	1	2	3	1					7
Total	7	21	7	2	4	7	1	1	50

Ohio		2		1					3
Ind		10			1				11
Ill						1		1	3
Mich	1	1				2			4
Wis.	1	9		1		3	3	1	18
Minn.		9		2	5	4			20
Iowa		2			1		1		[illegible]
Mo.	1	6	2	10	9	8			36
Total	3	30	2	14	20	18	4	2	10[illegible]
N.D.									
S.D.									
Neb.	4	10	2	18	17	6			57
Kans.	6	21	6	5	7	4	6		52
Mont.		2							2
Wyo.		1		1					2
Col		5				1			6
N.M.									
Okla.			2			3	1		6
Total	10	39	10	21	24	14	7		12[illegible]
Wash.		4	2	4	5	1	2		1[illegible]
Oregon		4	1						5
Cal		7			1			2	10
Ida		3		2					5
Utah		1	1						2
Nev.									
Arizona		1							[illegible]
Total		20	4	6	6	1	2	2	4[illegible]
	[illegible]	[illegible]	14	57	44	14	5		33[illegible]

According to the table, 336 state banks have failed since [illegible], but this does not include the entire number of insolvencies, which may properly be classed as those of state banks.

(a) State and savings banks are confused to a certain extent in these returns. In some states, stock savings banks are classed as state banks, consequently a certain part of the bank failures, termed those of savings banks by Bradstreet, should be included in state bank insolvencies. The total number of failures of savings banks was [illegible], and of these, [illegible] were in states where there was no possibility of confusion, because the state and savings banks are separated. There will, therefore, have to be added to the 336 state bank failures, [illegible] of stock savings banks.

(b) In one year, 1892, the returns of Bradstreet, as given in the table, do not cover the entire period, but only extend over six months. The Comptroller, in his report for [illegible], page 1[illegible], gave the number of state bank failures for the latter half of 1892 as eighteen.

Making these additions, the total number of insolvencies of state banks for [illegible] - [illegible] is found to be 420. The average number of banks of this class in operation during these years was [illegible]. It will be noted, however, that in the table no returns are given of insolvencies in North and South Dako-

ta.[1] The average number of banks in these states for the past eight years has been 17[illegible]. Deducting this amount from the average for all the states, we have [illegible] as the number to be used in ascertaining the rate of insolvencies. It seems, therefore, that over eleven per cent of the average number of state banks in operation failed during the period from [illegible] to [illegible]. In the same time, [illegible] national banks became insolvent, while the average number of such banks in operation was [illegible], so that the national system had a percentage of only six, or only a little over one-half of that of the state banks.

At first sight, this seems to prove conclusively the much higher safety of the national system, but some consideration will lead us to see that the difference is by no means as significant as it appears. The period which the statistics cover was an abnormal one. The most lengthy and severest depression known in the history of the United States extended over the greater part of these years, and it is a well known fact that the crisis was most keenly felt, and had its greatest effect, in those parts of the country in which the state banks are numerically strongest.

The mass of banks, incorporated under state laws, are found in the Southern, Western, and Pacific states. The state sys-

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1. This was caused by the fact that state laws forbids the collection of such information.

tems are also comparatively strong in the middle states, with the exception of Illinois, Indiana, and Ohio. Out of a total of 4,[illegible]00 state banks, nearly [illegible],500 are located in these groups. On the other hand, of [illegible],[illegible]90 banks in the national system, only 1,570 are in these sections. The importance of this fact cannot be exaggerated in its effect on the statistics of insolvencies since 1892. On the one hand, four-fifths of the state banks are in those states which suffered most from the depression, while less than one-half of the national banks are located there. Apart from any question of superiority of systems, economic conditions have powerfully affected the statistics of failures.

It is possible to determine more exactly what effect this difference in situation has had on the figures embodied in the table. Of [illegible] failures of national banks, [illegible] were in the sections named, and as has been said, the number of national banks located there was 1,570. The rate of failures was, therefore, somewhat in excess of ten per cent. We may conclude then that [illegible] of section, the national system has a superiority over the state systems of little more than one per cent.

It must also be borne in mind that the state banks are by no means homogeneous as to their regulations. It has also been shown that the systems (if the word may be used) vary from practically no control to a high degree of oversight. In the fig-

ures given, [illegible] indiscriminately [illegible]. It is [illegible] to assume that state [illegible], since on no other ground can the national system be supposed to be superior. The period from 1887 to 1892 was most prolific in laws providing for state inspection. Practically, we may say state banking began as a system in the former year. It is reasonable to infer that this legislation has tended to the safety of banks. Considering all this, it may safely be asserted that the figures do not prove that state banking, wherever proper safeguards are provided, is not quite as safe as national, and that even taking good with bad, the advantage of the national system in superior safety is small.

This view of the question is confirmed by the head of one of the largest state systems. The Superintendent of Banking of New York said:[1] "The Comptroller of the Currency, in his last report to Congress, in making a comparative statement of the percentage of failures between national and state banks, [illegible] to make the result favorable to the national banks without including under the head of state banks, also private banks and bankers, and in many of the states, loan and trust companies....which are under no supervision whatever. The comparisons should therefore be disregarded as unfair and unjust.

1. Report of Superintendent of Banking (N. Y.) 1898, page XXI.

from some knowledge of the subject, I venture to say that if a comparison is made between national banks and the incorporated state banks, only of various states of the Union, the showing will not be unfavorable to the state banks."

LEGISLATION CONCERNING PRIVATE BANKS, AND ITS TENDENCY TO CONVERT THEM INTO STATE BANKS.

Reference to the tables of state and private banks, contained in the Appendix, shows that in recent years the growth of state banks (taking the country as a whole) has been much more rapid than that of private banks. In 1882, according to the returns made to the Commissioner of Internal Revenue, as tabulated by the Comptroller of the Currency, there were 3,391 private banks in operation in the United States, while for the same year, the number of state banks and trust companies was given at 1,012.(1) At that time, private banks were growing at a rate far in excess of that of state banks. The figures for the years from 1879 to 1882, inclusive, are as follows:(2)

	Private	State
1879	1,634	1,005
1880	2,302	996
1881	3,038	978
1882	3,391	1,012

1. Report of the Comptroller of the Currency, [illegible], p. [illegible].
2. Ib. pp. 100, 102, 104.

Since 18[illegible], this has been reversed, and state banks have grown in numbers much the more rapidly. The table inserted here shows that since 1887 the number of private banks has decreased, while that of state banks has nearly tripled.

Private Banks.

	1882	1887	1899
N. England *	104	132	198
Eastern *	478	515	610
Southern	293	433	416
Middle	1,444	1,840	2,345
Western	430	911	302
Pacific	102	120	96
	2,851	3,951	3,867

*The returns of private bankers in New York are omitted.
*The increase in New England is caused by private bankers in Boston.

State Banks.

	1882	1887	1899
N. England	[illegible]	19	22
Eastern	175	202	[illegible]
Southern	198	282	1,075
Middle	[illegible]	5[illegible]8	1,[illegible]4
Western	57	353	942
Pacific	64	12[illegible]	275
	861	1,536	[illegible]

There are two distinct functions which private banks ful-fill, (1) As an adjunct to [illegible] in large cities; (2) As a means of [illegible] credit in small communities, chiefly, located in agricultural sections. It is in the latter of these functions that they enter the same field as the state banks.

The private bank, early in our history, became an important factor in furnishing banking facilities in newly settled localities. In Illinois, Ohio, Indiana, and in lesser degree, Iowa, Wisconsin, Minnesota, and Missouri, the private banks were firmly established before the Civil War. Incorporation was reserved for banks of issue, and banks doing only a discount and deposit business were unincorporated. Since the extinction of state bank note issue, the private banks have held their place in these states to a very large extent. The privilege of incorporation was reserved to banks having a capital of at least $25,000. Even yet, in Ohio, Indiana, and Illinois, this is the lowest capital with which an incorporated bank is allowed to organize.[1] For a considerable period after the war, no attempt was made to adapt the [illegible] systems to the needs of the [illegible] of discount and deposit. There thus grew up a system of private banks which still flourishes. In the other

1. See note to page 24

states of this group, the limit of capital is lower, and state banks are increasing in importance relatively to private banks. It is only in this group that any considerable increase is shown in the number of private banks. The increase of 500 banks was mainly in Ohio, Indiana, Illinois, and Iowa, being for these states 400 or four-fifths of the total increase for the group. The long use of private banks in these states, together with the higher capital required for state banks, has kept the greater part of the banking business in the smaller centers in the hands of the private banks.

As will be seen by the table, the southern states have never invested any great part of their banking capital in private banks. The system of special charters, succeeded for the most part by undifferentiated incorporation laws, has offered an easy method of securing the corporate form of organization to banks of small capital.

The western group is the one in which the conflict of the private and state bank has been keenest, and in which the state bank appears to have almost vanquished its rival. It will be noted that in 1887, the private banks in these states were nearly three times as numerous as the state banks, while in [illegible], the ratio was more than reversed. The evils of private banking are greatest in states whose development is in an early stage.

It was very natural, therefore, that attempts should be made in the several states to regulate and control the business of these banks. This regulation and control has had an important influence in converting private into state banks, and in inducing persons about to undertake the banking business to seek incorporation. It is an observation as old as Adam Smith that the corporate form of organization is peculiarly suited for carrying on banking. But there has been something more than merely preference for the corporate form which has induced, in the Western states, an almost complete abandonment of private banking.

The growth of state banks at the expense of private banks has been much forwarded in this growth by legislation imposing restrictions on private banks. In order to understand the purpose and cause of these laws, it will be necessary to examine in some detail the legislation now in existence pertaining to private banks. The regulation of unincorporated bankers is an outgrowth of the general change in feeling as to the function of bankers. The view that the discount and deposit business is a matter of public interest has caused restrictions to be imposed on carrying on banking, even as an individual. This regulation appears in several phases.

In the first place, it has been urged in several states

that a private banker should not operate under a corporate name. This argument has had especial force in states where incorporated banks are under state supervision. It has been thought just that the public should know with exactly what form of banking institution it is dealing. It appears to be quite common in some sections for private banks to assume names which would indicate that they were incorporated. The Public Examiner of Minnesota called attention to the fact that in 1886, of 126 private banks carrying on business in that state, 116 had corporate names.(1) The laws of New York,(2) Minnesota,(3) and Washington(4) impose only this restriction on private bankers.

In a few states, the regulation of unincorporated banks has gone no farther than the requirement of reports. This is the case in California(5) and Mississippi.(6) Otherwise, these states leave private banking unregulated. This and the preceding restriction evidently aim only at the information of the public; they do not profess to effectively safeguard the banking business.

In several states, private banks are put on the same foot-

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1. Seventh Report of Public Examiner of Minn., 1886; vide also Reports of Commissioner of Banking (Mich.) 1891; 1892; [illegible].
2. Laws of New York, 1882, ch. 409, [illegible].
3. Laws of Minn., 1887, ch. 39.
4. Laws of Wash., [illegible], p. [illegible].
5. Laws of Cal., 1887, p. 90.
6. Laws of Miss., [illegible], p. 29.

are also incorporated banks as to supervision and examination. Such is the case in North Carolina,(1) New Jersey,(2) and Wisconsin,(3) which require private banks to be examined and to make reports.(4) In 1897, Georgia subjected private banks to the same requirements as state banks were under, but this law was repealed in 1898.(5)

Supervision of private banks is carried on under conditions which render it much more imperfect as a safeguard than in the case of incorporated banks. It has already been pointed out that the fundamental safeguard under the systems of bank regulation used in the United States is a capital. Our whole scheme of supervision rests on that, and under the laws in vogue in most of the states in the Union, a private banker is not required to have any specified amount of capital. In the last group of states to be considered, it is this defect which an attempt has been made to remedy. Missouri was the first state to adopt this policy. By act of 1877, private bankers are prohibited from engaging in the business of banking without a paid up capital of not less than five thousand dollars, and they must not employ their capital otherwise than as banks of discount and deposit are permitted to do.(6) By the act

1. Laws of N. C., 1[illegible]7, chap. 17[illegible].
2. Laws of N. J., [illegible], chap. 361.
3. Laws of Wis., [illegible], chap. [illegible].
4. Laws of Ga., 1897, p. [illegible]
5. Laws of Ga., 1898, p.12.
6. Private bankers are defined as those "who carry on the business of banking by receiving money on deposit, [illegible]

of 1895,[1] they are subjected to the same supervision as incorporated banks, and it was made the duty of the examiner to proceed against them in case of impairment of capital. The principle of securing a capital has been tried in Nebraska. The capital of incorporated and unincorporated institutions for banking is to be of equal amount, and in every respect, except the ownership of real estate, the same restrictions were imposed on the two classes of banks.[2] When the first Kansas act for the regulation of the banking business was passed, it included, practically, the same measure.[3] Sec. 35 made private banks "amenable to all the provisions of this act," and this was construed to require such banks to have capital of the same amount as incorporated banks.[4] More recently, Kentucky has adopted the same policy: a minimum capital of $15,000 is required for private banks,[5] and in the Utah Revision of 1898,

out interest.....and of loaning money without being incorporated." Revised Statutes, 1898, #921.

1. Laws of Mo., 1895, p. 97.
2. Laws of Neb., 1889, ch. 37, and id. 1895, ch. [illegible].
3. Laws of Kan., 1891, ch. 43, sec. 35.
4. The Commissioner, in his report for 1893, p.1, recommends that "as to the rights and duties of private banks, the law should be made more definite. While sec's 17 and 35 recognize the rights of individuals or partners to do a banking business without incorporating, yet the other sections of the law seem to have been framed for application to incorporated banks only; hence, in the construction of the law as to its application to private banks, it requires not only a constant recollection of sec. 35, but a vivid and analytical imagination as well."
5. Laws of Ky., 1904, ch.171, pp. 62, 63, 64, 65.

the Kentucky provisions are copied,[1] except that the amount of capital required varies with the size of the population of the place in which the bank is located.

But in almost all of these states, a difficulty has presented itself which seems to make the requirement of capital but a small protection to the depositor. As a general rule, the private banker is engaged in other business besides that of carrying on the bank, and in the event of his failure, creditors other than depositors come in for a share of the assets. A corporation, on the other hand, cannot engage in business other than that prescribed by its charter. In Missouri and [illegible], the law forbids the private banker to use any of his funds in other business, but he may use other funds, and even without actually engaging in any other business, he may accumulate an indebtedness which may prove a severe charge on the banking assets. In a recent case in Nebraska, it was held that under the law in that state, "an unincorporated bank, exclusively owned by a private individual, is not a legal entity, even though its business be conducted by a president and a cashier, and that in such a case, the assets of the bank represent merely the portion of the owner's capital invested in banking, and he can lawfully dispose of them to pay or secure the just claims

1. Revised Statutes of Utah, 1[illegible]98, #[illegible].

of any of its creditors."[1] In Kansas, this question was met by an enactment in the law of [illegible] that "Any individual or firm doing business as a private bank shall designate a name for such bank, and all property, real or personal, owned by such bank, shall be held in the name of the bank, and not in the name of the individual or firm; all of the assets of any private bank shall be exempt from attachment or execution by any creditor of such individual or firm until all liabilities of such bank shall have been paid in full. No private banker shall use any of the funds of the bank for his private business."[2] This makes of the private banker in Kansas a corporation, to all intents and purposes, except that his liability is unlimited, and that he has no perpetuity. It is practically the creation of a new sort of corporation.[3] The same difficulties have manifested themselves in Wisconsin, where no capital is required for private banks. The State Examiner, in his report for 1899, page 12, says that the private banker, being engaged in other business, frequently causes the depositors loss, but he believes that it would be unconstitutional to prohibit his engaging in other business, or to make depositors preferred creditors.

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1. Longfellow & Barnard, [illegible], N. W. 255.
2. Laws of Kan., 1897, chap. [illegible].
3. Such a personage might raise interesting legal questions, since it is neither an individual nor a corporation.

South Dakota, North Dakota, and Oklahoma have dealt most radically with the problem. They have required all persons conducting a banking business to become incorporated.(1) In both South Dakota and North Dakota, the law was contested as unconstitutional, but with different results. The Supreme Court of North Dakota, in State vs. Woodmansee,(2) held that the requirement of incorporation was constitutional, and was a legitimate exercise of the police power. The South Dakota court took an entirely different view of the question, the gist of its decision being that banking, except with the right of issue, was not a franchise, and had not been made one (at the common law) by the Constitution of South Dakota.(3) "Whence then," asks the Court, "did the legislature of the state derive its power to farm out these privileges to corporations, and to deny to the individual citizen the right to exercise them, which he and his ancestors have from time immemorial possessed."(4)

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1. Laws of N. D., 1890, chap. 23, #27.
   Laws of SouD., 1891, chap. 27, #27.
   Laws of Okla., 1897, chap. 4, sec. 2.
2. N. D., 246.
3. State v. Scougal, 3 S. D. 55. The court also found the law unconstitutional as being in conflict with certain provisions of the state constitution guaranteeing individual rights. It was also held to be a violation of the 14th Amendment to the Constitution of the U. S. These objections evidently depend on the answer to the question "Is banking a franchise?" If that is answered in the negative, individual rights would not seem to be violated.
4. Id. p. [illegible].

It is undoubtedly true that banking, even with the right of note issue, was not a franchise at the common law. It is equally undeniable that banks of issue at a comparatively early period were required to be incorporated, and such banking became a franchise. The question would seem to be then by what means the transformation was effected, or, to put the matter more broadly, by what means a franchise may be created? Under our system of jurisprudence, is a constitutional provision necessary to create a franchise, or may it be done by legislative act simply? Looking at the question, historically it cannot be denied that note issue was made a franchise (in many states) without the intervention of constitutional provisions. In the case of Bank of Augusta v. Earle,[1] the Supreme Court said, "The institutions of Alabama, like those of the other states, are founded upon the great principles of the common law, and it is very clear that at common law, the right of banking in all its ramifications belonged to individual citizens, and might be exercised by them at pleasure. And the correctness of this principle is not questioned in the case of State v. Stebbins. Undoubtedly, the sovereign authority may regulate and restrain this right, but the constitution of Alabama purports to be nothing more than a restriction upon the power of

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1. 13 Peters 596.

the Legislature in relation to banking corporations, and does not appear to have been a restriction on individual rights. That part of the subject appears to have been left, as is undoubtedly, for the action of the Legislature to be modified according to circumstances, and the prosecution against Stebbins was not founded on the provisions contained in the constitution, but was under the law of 1827 prohibiting the issue of bank notes."

The view of the North Dakota court was essentially in accord with the facts in the case. The purpose of the state in requiring incorporation was to more effectively exercise its police power, but the South Dakota decision was quite as undoubtedly right in a historically legal way. To say that an individual cannot, as an individual, carry on a certain business, is, in a strictly legal sense, making it a franchise. It may be noted that such a law no longer aims at the profit of the state, but only aims at regulation. It is this difference in the view point which causes the opposition in decisions: the one court regards incorporation in our modern way of thinking as an instrument or method of carrying on a business, while the other regards it as a means of carrying on a franchise or monopoly; a kind of East India Company. The question has never come before the courts in Oklahoma, so that of two decisions,

one upholds, and the other denies, the right of the legislature to enforce incorporation of private banks.

Regulative acts, even those requiring a capital stock, have been upheld by the courts as an allowable exercise of the police power.[1] Even in State v. Scougal, it was said, "Assuming that the business of banking we are now considering is clothed with such a public use that it may be controlled by the State--and we think it so affected with a public interest, etc."

The question is one which is evidently exciting an increasing amount of interest. It is clear that the best plan for regulation under our present systems of supervision lies in requiring incorporation. The Secretary of the State Board of Nebraska, in his Eighth Annual Report, commenting on the decision of the Supreme Court in Longfellow v. Barnard, says, "The decision denies to an individual engaged in the banking business as a private banker, the right to set aside any portion of his capital as bank capital upon which depositors or other creditors of his bank would be entitled to a prior lien, and makes the capital of his bank subject to all of his debts, bank and otherwise, and makes all of his property, bank capital and other, liable for any of his debts, thus placing a private bank owned by an individual [illegible] any other business in which he

1. Blaker vs. Hood, 53 Kans., p. [illegible].

may be engaged. If this decision is to stand as the law of this state, then should private banks owned by individuals be prohibited by law." Also in Kansas, the present laws, seemingly going as far in assimilating an unincorporated bank to a corporation as it is possible to go without requiring incorporation, do not satisfy the Commissioner, for in his report for 1897 - 1898, p. XI, he says, "While some very good lawyers are in doubt as to the power of the state to require all banks to incorporate, many of our ablest attorneys express the belief that it is within the power of the legislature to designate the manner in which this privilege may be exercised. I therefore recommend that our banking law be so amended as to require all banks to incorporate. If this recommendation should fail of adoption, I recommend that private bankers be prohibited from engaging in other business, and that all private bankers be required to live within the state."

The following table shows how important the effects of this restriction has been in changing the relative position of state and private banks.

Table of States Having Laws Prohibiting Private Banks, or Requiring Them to Have a Capital.[1]

	1877		1882		1887		1892		[illegible]	
	Private	State	Pr.	St.	Pr.	St.	Pr.	St.	Pr.	St.
Kans.	84	26	160	31	3[illegible]3	1[illegible]	[illegible]	281	96	273
Neb.	30	8	[illegible]3	1[illegible]	278	130	16[illegible]	366	74	31[illegible]
Mo.	104	101	96	134	120	21[illegible]	124	422	107	4[illegible]
Ok.									4	[illegible]
N.D.							30	68	0	[illegible]
	8		48	2	133	[illegible]				
S.D.							6[illegible]	110	17	95
	2[illegible]3	135	417	185	943	549	593	1247	321	1319

In Missouri, it will be seen while state banks are five times as numerous as in 1877, private banks are about the same in number now as then. In the other states in the group, the period of maximum for private banks was reached about the time of the adoption of laws regulating them. Since then, private banks have decreased, and state banks increased. The decisive period was from 1887 to 1892, for it was during this time that the laws of Kansas, Nebraska, North Dakota, and South Dakota were enacted. From 1892 to 1[illegible], there was little growth in state banks, in fact, in most of these states, a decrease, but the private banks have shown the same tendency in a much higher degree. The period of [illegible] has had a greater ef-

1. Kentucky and Utah are omitted, since the legislation is so recent that its effect [illegible] not appreciable.

rest in private banks than in the state banks. This has been caused by conversions from the private banks nearly, if not quite, making up for losses due to industrial conditions. The change from private to state banks is going on constantly,--and it appears probable that the private bank will soon disappear from existence in these states.

NUMBER OF STATE BANKS IN OPERATION EACH YEAR

FROM 1877 TO 1900.

The accompanying table[1] has been prepared from various sources, which are indicated by references at the foot of each page. The entire body of information obtainable on the subject may be classified as follows:

I. Reports by officials of the Federal Government.

(a) Reports of the Comptroller of the Currency, 1873 - 1900.

(b) Reports of the Commissioner of Internal Revenue. 1864 - 1882.

II. Reports by State Officials.

III. Unofficial Statements.

(a) "Homans' Bankers Almanac," 1852 - 1896.

(b) "Rand and McNally's Banker's Guide, 1876 - 1900.

I. Reports by Officials of the Federal Government.

The first attempt by any national authority to collect statistics of banking for the whole country was made in 1833, under a resolution passed by the House of Representatives on July 10, 1832. From this time until 1863, with the exception of some few years, reports were regularly made on this subject by

(1) Appendix B

the Secretary of the Treasury. In his annual report for 1863, Secretary Chase recommended the repeal of the resolution of 1832, and no further information as to the banking business in the United States was given in the succeeding reports of the Treasury Department.

From 1863 to 1873, no government publication contained statistics relating to banks other than national, except the Reports of the Commissioner of Internal Revenue, in which the figures for state, private, and savings banks were indiscriminately mingled.

By act of Congress in 1873,[1] the Comptroller of the Currency was required to report to Congress "a statement exhibiting under appropriate heads the resources and liabilities of the banks, banking companies, and savings banks organized under the laws of the several states and territories, such information to be obtained from the reports made by such banks, banking companies, and savings banks to the legislatures or officers of the different states and territories, and where such reports cannot be obtained, the deficiency to be supplied from such other sources as may be available."

Until 1887, the Comptroller included in the table of state banks, only those banks which made returns to some State offi-

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1. Revised Statutes of the U. S., sec. 333.

cial.[1] The statistics were reported by the authorities in the various states. Beginning with 1887, and continuing to the present time, figures have been gathered, by direct correspondence, of banks located in states whose laws require no reports. The fullness of these returns has depended entirely on the disposition of the banks to give the information asked for.[2]

The Reports of the Commissioner of Internal Revenue from 1864 to 1882 contained statements as to the taxes paid by banks under the internal revenue laws. From 1873 to 1882, the reports of the banks to the Commissioner, given as a tax return, were tabulated by the Comptroller, and included in his reports. In these summaries, it was not until 1887, that state and private banks were separated, and only in those for 1880, 1881, and 1882, were the classes of banks shown by states. This is the last complete enumeration of all banks in the United States, since the repeal of the tax on banks took away the source of such information.[3]

II. Reports by State Officials.

The state report is to be regarded as the best source of

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1. There was a sporadic attempt in 1875 to gather information as to other state banks, but it was abandoned in 1877.
2. As a matter of fact, comparatively few banks have made these reports.
3. The revenue law of 1898 affords an opportunity for a similar complete table.

information. As has been seen, the statistics contained in the Comptroller's Reports derive their value from the fact that they are based on returns made to state officials. These are not voluntary reports, but are made under law, and consequently, are complete. While the Comptroller has utilized the greater part of these official state reports, it has sometimes happened that he has given other figures, or omitted to give any when official ones were in existence. In such cases, the official returns, whenever obtainable, have been used in this table.

III. Unofficial Reports.

Since 1868, "Homans's Bankers Almanac and Register has given each year the number of state banks in operation in the country. Before using such a source, the following queries must be satisfactorily answered:

(1) Is the meaning of "state bank" in "Homans's" the same as that in Federal and state official documents?

(2) How accurate are these returns?

(1) The word "state bank" in "Homans's" includes state savings banks and trust companies. At first sight, this would seem to make it useless, since the reports of the Comptroller profess to exclude both these classes from the category of

"state banks," but on examination of the Comptroller's reports, it is found that he has been unable to carry out his design, since in several states the returns for each class cannot be separated. But the whole matter is comparatively unimportant, because trust companies and stock savings banks do not develop to any great extent, except where industrial organization is of a high order, and in such states, with few exceptions, the official state returns go back so far that there is no need to use the figures from "Homans'," or, if used at all, it is only for a very early period when trust companies and stock savings banks were unimportant. Wherever possible, trust companies and stock savings banks are excluded, but where they assume any importance and cannot be eliminated, the fact is reported in a foot note.

(2) Accuracy.

Tested state by state by the complete official return of 18[illegible], the numbers in "Homans'" show a high degree of accuracy. Trifling discrepancies exist, but in general, the agreement is such as to show that the unofficial reports approximate very closely to the official figures.[1]

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1. In practically all cases, the returns in Homans' are lower than in the official reports. Analyzing by groups, we find:

	Homans'	Official	
South,	196	216	80%
Middle,	398	439	90%
West Pacific,	75	82	91-1/2%

These unofficial returns have not been used, however, except when no official figures have been obtainable, and it is believed by their use a much more exact idea can be obtained of the increase in banks in various sections.[1] It is not asserted that these figures give the exact number of banks in operation in any given year, but it is believed that, taken for several years, they show rate of growth in numbers. The Comptroller's Reports either do not fill in breaks in official statistics at all, or else with returns made directly to Comptroller. In either case, the figures in "Homans'" approach more nearly to accuracy. So whether the present table shows approximately the rate of growth or not, it must show it more nearly than the only statistics heretofore obtainable.[2] This fact will be brought out somewhat more clearly by statements of the relation of the present table to those contained in the Comptroller's Reports.

(1) There is a considerable number of states for which the official figures have been obtained by the Comptroller during

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1. See for use made of these statistics in showing growth of banks, page

2. The substantial accuracy of the Homans' figures may be seen by the fact that whenever a state has adopted official regulation of banks, and exact returns have been procurable, these returns approach very closely to those in Homans'. As the Reports of the Comptroller have become more perfect, the numbers of banks reported, agrees more nearly with "Homans'".

the whole period since the beginning of his statistics of state banks. All of the New England and Eastern States, except Delaware; Ohio, Indiana, Michigan, Wisconsin, Iowa, and Minnesota, of the Middle States; Kentucky alone of the Southern, and none of the Western or Pacific States, fall in this class. As a general rule, as will be seen by a reference to the table, the statistics of these banks are reproduced from the Comptroller's Reports, without change. Some confusion in the figures is produced by the varying policy of the Comptroller's office as to the classification of savings banks. In the case of Michigan, down to 1886, all banks were classed as state banks, but in this year, they were divided into state and savings banks. In 1887, they were all classed together, but in 1888, the division was again made, and retained until 1893, when the early method was reverted to. The banks of Michigan are essentially banks of discount and deposit, nearly all of which carry on in addition a savings bank business. But whatever classification is made of them should be a continuous one. Consequently, they have all been placed as state banks, and the figures of state banks in Michigan in the Comptroller's Report for 1886, 1888, 1889, 1890, 1891, 1892, have been replaced by the figures of the state officials. An opposite situation presented itself in Iowa. Since 187[illegible], savings and state banks have been classed

separately in reports of Iowa officials. Until [illegible], in the Comptroller's Reports, the two classes were grouped together as state banks, but after that time, they were separated. It seems best to keep them apart throughout, and accordingly in the table, the early figures as given by the Comptroller are replaced by the official figures as given by the State Auditor.[1]

(2) Another class of states embraces those for which official statistics have become procurable during the period which the table covers. Such states are: Illinois, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Colorado, Wyoming, Oklahoma, Virginia, West Virginia, North Carolina, Georgia, Florida, Mississippi, Louisiana, Washington, California, Montana, New Mexico, and Utah. Wherever the Reports of the Comptroller are based on other than official statistics, they have been amended by inserting the figures contained in Homans'. It has also happened in some cases that even when official figures were obtainable, the Comptroller has not used them. In such cases, those figures have been inserted in this table in place

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1. Since the Auditor's reports, up to [illegible] were biennial, returns are only obtainable for alternate years; the intervening years have been filled by taking an average of the preceding and succeeding numbers. Such figures are not absolutely accurate, but can only vary slightly from the actual facts. This method of filling in years when the preceding and succeeding years are known has been used in several cases in the table.

of those used by the Comptroller. Since 1891, for example, state banks in West Virginia have been required to make reports to the State Auditor, but only for a few of these years has the Comptroller used these official statistics. The Auditor's reports give the following as the numbers for state banks for each year: 1891, [illegible]; 1892, 45; 1893, 55; 1894, 60; [illegible], [illegible]; 1896, [illegible]; 1897, 63; 1898, 74; 1899, 75, while the Comptroller's Reports give 1891, 10; 1892, 27; 1893, 45; 1894, 26; 1895, 58; 1896, 59; 1897, [illegible]; 1898, 41; 1899, 75. Evidently, from 1891 to 1895, these are only partial returns. Such is also the case in 1898. The figures for Georgia show the same discrepancies.

In several states, there has been some confusion in the official figures, because private and state banks have not been separated. The Comptroller's office has not attempted to cure this defect, but it has been found possible in nearly all cases by resorting to the official reports in the various states to make a separation. In the reports for Illinois, loan and trust companies and stock savings, which were given separately until 1898, have since that date been combined with state banks. No figures for 1898 and 1899 can be absolutely accurate, but the numbers given in the table are based on the assumption that the rate of increase of the various classes has been constant.

In Mississippi, some private banks are included in state banks, but it has been impossible to separate them. The number, however, is small.

(3) The third class of states consists of those which have never required any statements from banks. The figures for these states are taken entirely from "Homans'".

Appendix I.

Numbers of State Banks – 1877–1899

By States and Years.

Numbers of State Banks in

tates and erritories	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888
Maine	2	1										
. Hampshire	1	1	1	1	1	1	1	1	1	1	1	1
ermont	5	5	5	5	6	6	8	7	8	8		
assachusetts												
Rhode Island	15	15	14	14	14	13	13	10	10	10	10	10
onnecticut	4	4	4	4	4	4	6	6	6	8	8	8
tal N.E. States	27	26	24	24	25	24	28	24	25	27	19	19
ew York	81	75	71	66	[illegible]	74	82	87	92	92	102	122
ew Jersey	12	10	10	8	7	6	7	7	9	10	8	8
nnsylvania	113	106	88	88	82	81	81	79	81	79	80	77
Maryland	15	14	13	10	8	10	10	10	10	10	8	9
Delaware	6[a]	7[a]	5[a]	5[a]	4[b]	4[b]	4[b]	4[b]	4[b]	4[b]	4[b]	4[b]
tal Eastern States	227	212	187	177	171	175	184	177	196	195	202	220
irginia	40[a]	46[a]	44[a]	[illegible][a]	44[a]	44[a]	41[a]	41[a]	38[a]	35[a]	55[a]	64[a]
West Virginia	15[a]	15[a]	15[a]	15[a]	14[a]	16[a]	19[a]	16[a]	17[a]	18[a]	25[a]	56[a]
orth Carolina	3[a]	5[a]	5[a]	5[a]	2[a]	4[a]	6[a]	6[a]	7[a]	9[a]	11[a]	16[a]
S. Carolina	4	8[a]	5[a]	4[a]	2[a]	4	3	4	5	7[a]	15[a]	19[a]

a Homan's Bankers' Almanac b. Official State Reports

each State 18[illegible] 1899

1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	
1	1										Maine
											N. Hampshire
										8	Vermont
											Massachusetts
9	9	8	6	6	6	6	6	6	6	6	Rhode Island
8	8	8	8	8	8	8	8	8	8	8	Connecticut.
18	18	16	14	14	14	14	14	14	14	22	Total N.E. States
145	164	176	190	201	205	21[illegible]	216	213	210	207	New York
13	21	22	22	22	21	21	21	21	21	21	New Jersey
81	82	8[illegible]	82	85	80	79	83	[illegible]	[illegible]	[illegible]	Pennsylvania
10	8	7	8	6	6	9	10	12	12	12	Maryland
4[b]	4[b]	4[b]	4[b]	4[b]	4[b]	4[b]	4[b]	4[b]	4[b]	3[b]	Delaware
253	279	293	306	318	316	326	334	337	337	343	Total Eastern States
67	76	93	90	90	84	85	86	85	92	89	Virginia
29[a]	32[a]	42[b]	45[b]	55[b]	56[b]	58[b]	60[b]	68[b]	74[b]	75[b]	West Virginia
20	2[illegible]	29	32	33	36	36	41	45	44	45	North Carolina
28[a]	45[a]	57[a]	67[a]	70[a]	67[a]	68[a]	78[a]	76[a]	78[a]	81[a]	South

All oth[illegible] from Reports of Comptr[illegible]

Numbers of State Banks in Each State

	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887
	27 [a]	29 [a]	26 [a]	26 [a]	21 [a]	18 [a]	17 [a]	21 [a]	21 [a]	20 [a]	23 [a]
lorida							1 [a]	1 [a]	2 [a]	3 [a]	4 [a]
labama	6 [a]	7 [a]	7 [a]	7 [a]	6 [a]	5 [a]	5 [a]	5 [a]	8 [a]	8 [a]	6 [a]
ississippi	7 [a]	5 [a]	7 [a]	6 [a]	8 [a]	8 [a]	9 [a]	8 [a]	9 [a]	11 [a]	11 [a]
isiana	9 [a]	10	10	10	10	4	4	4	4	6 [a]	5 [a]
xas	13 [a]	17 [a]	15 [a]	14 [a]	12 [a]	12 [a]	12 [a]	14 [a]	15 [a]	13 [a]	9
kansas	1 [a]	2 [a]	3 [a]	3 [a]	4 [a]	3 [a]	2 [a]	3 [a]	5 [a]	4 [a]	10 [a]
ntucky	54	51	49	55	61	60	65	68	69	72	71
nessee	18 [a]	18 [a]	17 [a]	17 [a]	17 [a]	16 [a]	15 [a]	15 [a]	19 [a]	22 [a]	37 [a]
l South- States	199	213	201	206	207	198	201	205	220	228	282
o	44	36	33	32	29	27	29	29	38	35	46
diana	13	15 [c]	18	20	19	17	17	21	27	29 [c]	32
inois	30 [a]	34 [a]	29 [a]	32 [a]	27 [a]	27 [a]	27 [a]	29 [a]	29 [a]	30 [a]	31 [a]
ichigan	30	26	29	26	29	28	30	30	44	49 [a]	62
isconsin	26	28	29	30	31	34	35	43	50	46	56
wa	31 [b]	32 [c]	33 [b]	32 [c]	31 [b]	40 [c]	48 [b]	40 [c]	50 [b]	59	65
innesota	13	14	17	21	24	27	34	38	34	41	54
issouri	101 [a]	84	107	108	120	134	155	178	187	199	212
l for	288	269	295	299	310	334	375	417	459	488	558

by years 1877-1899

1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	
31	46	66	87	108	111	111	108	111	114	114	137?	Georgia
4	6	15	15	11	18	19	21	19	23	20	23	Florida
1	20	30	39	44	40	36	33	42	40	[illegible]	42	Alabama
15	30	47	54	55	63	55	64	75	83	[illegible]	92	Mis...
6	6	6	11	16	18	22	27	38	39	51	50	Louisiana
7	5	4	4	4	4	3	8	6	4	3	0	Texas
13	23	40	52	61	[illegible]	[illegible]	64	82	81	79	86	Arkansas
83	106	123	151	162	164	161	171	167	188	192	216	Kentuck
45	77	100	117	124	122	112	113	135	134	132	139	Tennesse
336	463	605	751	819	851	825	856	940	980	1012	1075	Totals for Southern St
25	48	49	64	77	86	87	95	125	131	144	155	Ohio
32	37	45	53	72	86	88	92	[illegible]	96	94	97	Indiana
31	16	26	40	78	89	91	90	[illegible]	104	106	106	Illinois
74	90	106	121	138	159	164	171	178	179	179	188	Michig...
64	67	80	91	109	118	125	125	126	130	132	133	Wiscons
64	80	105	122	141	177	188	194	201	206	209	207	Iowa
61	67	76	93	117	133	14[illegible]	149	152	145	146	171	Minnes...
235	261	301	401	422	455	[illegible]	482	484	500	494	415	Missouri
589	665	788	985	1054	1302	1351	14[illegible]	1469	1491	1504	1534	Totals for Middle St

29
27
27
29
32
47 | 439
23 | 96
123

337 — 333

5 | 44
16
4
4
22
1

JOHNS HOPKINS UNIVERSITY,
BALTIMORE.

132	Priv. 1958	
515	202	
433	109	
136	449	1899
1830	383	
854	+ 282	198
81	112	813
3951	1526	416
		118
		1443
		1108
		73
		4269

3

Number of State Banks in

	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887
Dakota						{ 2[a] }	3[a]	11[a]	18[a]	35[a]	62[a]
Dakota											
Nebraska	8[a]	8[a]	7[a]	8[a]	14[a]	18[a]	29[a]	38[a]	56[a]	80[a]	126[a]
Kansas	26	23	29[a]	33[a]	34[a]	31[a]	37[a]	46[a]	54	68	144
Montana								[illegible][a]	3[a]	3[a]	3[a]
Wyoming											2[a]
New Mexico											3[a]
Colorado	5[a]	4[a]	6[a]	6[a]	7[a]	6[a]	8	8		8	8
Oklahoma											
[illegible] States	39	37	42	47	55	57	77	106	139	194	353
Washington									[illegible]	[illegible]	3[a]
Oregon						1[a]	4[a]	5[a]	5[a]	5[a]	7[a]
California	43[a]	56	60	58	56	61	67	74	73	75	88
Idaho											3[a]
Utah											2[a]
Nevada	2[a]	4[a]	3[a]	3[a]	2[a]	2[a]	5[a]	3[a]	4[a]	2[a]	3[a]
Arizona											6[a]
Total Pacific States	45	60	63	61	58	64	76	82	82	82	112
Total U.S.	825	817	812	814	826	852	941	1011	1121	1214	1526

each State by Years 1877–1899

1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	[illegible]	[illegible]	
74[a]	102[a]	77[a]	51	68	72	71	70	72	73	86	106	N. D.
		88[a]	65	110	82[b]	84[c]	86	80	87[c]	[illegible]	95[c]	S. D.
158[a]	207[a]	292[a]	343[a]	366[a]	386[a]	377[a]	371[a]	335[b]	311[b]	314[b]	331[b]	Neb.
177	200[c]	224	249[b]	281	276[b]	274	287[b]	283[b]	277[b]	275[b]	299[b]	Kans.
5[a]	6[a]	[illegible]	9[a]	13[a]	14[a]	13[a]	4	[illegible]	[illegible]	[illegible]	[illegible]	Mont.
1[a]	1[a]	1[a]	1[a]	3	5	6	4	5	5	5	8	Wyo.
4[a]	1[a]	4[a]	6[a]	8[a]	7[a]	8[a]	7[a]	8[a]	6[a]	6	7	N. M.
13[c]	18	24	27	21	29	29	33	31	32	30[c]	28	Col.
					4[a]	11	6	29[a]	49	55[z]	68	Oklahoma
432	538	...	753	870	880	879	888	840	847	873	942	Total for western
4[a]	11	24	59[a]	68[a]	64	43	40	36[c]	32	30[c]	28	Wash.
4[a]	9[a]	17[a]	19[a]	31[a]	30[a]	28[a]	31[a]	32[a]	30[a]	30[a]	3	Oregon
110	122	131	144	161	173	171	173	174	173	176	176	California
3[a]	3[a]	5[a]	6[a]	9[a]	10[a]	8[a]	9[a]	11[a]	11[a]	10[a]	12[a]	Idaho
2[a]	1	2	9	11	5	12[a]	13[a]	13[a]	8	8	11[a]	Utah
3[a]	3[a]	7[a]	8[a]	5[a]	5[a]	5[a]	5[a]	7[a]	7[a]	7[a]	7	[illegible]
5[a]	6	9[a]	8[a]	9[a]	9[a]	10[a]	8[a]	7	7	7	7[a]	Arizona
136	155	195	253	294	296	277	279	280	268	268	275	Total Pacific states
1732	2092	2532	3051	3357	3662	3666	3461	3477	3437	4108	4236	Total U. S.

Appendix II

Number of Private Banks 1877-1899

By States and Years.

Numbers of Private Banks in Each State

	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887
Maine	8	8	8	9	11	11	11	10	12	14	15
N. Hampshire	2	3	4	4	4	3	1	3	3	3	3
Vermont	1	4	3	3	[illegible]	2	1	2	3	2	2
Massachusetts	52	58	62	70	70	67	75	69	71	71	77
Rhode Island	5	5	5	5	6	7	6	8	8	7	7
Connecticut	14	18	15	15	16	19	16	22	21	19	28
Totals	82	96	95	107	110	109	119	114	118	116	132
N.Y. (state)	201	193	198	184	182	186	179	168	160	163	172
N.Y. (city)	88	102	69	68	69	65	68	66	67	75	74
N. Jersey	10	8	8	6	6	7	6	6	6	6	6
Penn.	306	316	295	285	269	294	260	247	233	249	243
Maryland	23	23	20	21	22	27	32	38	16	37	19
Delaware	3	7	3	3	3	3	4	4	3	3	3
Totals	631	649	593	567	551	582	549	529	529	531	515
V[illegible]	30	26	32	32	33	34	41	42	37	42	28
[illegible] a	8	11	11	7	5	5	6	5	6	5	3
N.C.	4	10	8	9	12	11	17	14	15	16	18
S.C.	19	23	22	18	15	20	19	20	22	21	24
Ga.	39	47	45	40	50	57	58	67	68	64	70
Ala.	17	23	23	23	27	32	35	36	39	44	49
Miss.	21	18	24	25	23	21	21	22	18	17	15
La.	7	9	9	8	10	13	13	15	15	15	14
Texas.	73	78	79	85	98	124	123	122	116	112	122
Tenn.	10	13	14	14	14	15	15	15	18	18	19
Ky.	36	36	30	30	31	33	35	34	36	32	36

[illegible] – 1899

1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	
12	13	13	15	15	13	10	11	8	8	8	8	[illegible]
3	6	5	4	4	4	3	2	2	2	2	2	[illegible]
2	2	3	4	4	4	3	2	1	1	1	1	[illegible]
74	77	77	73	72	75	72	79	162	165	166	160	
7	8	10	11	11	11	10	9	5	5	6	11	[illegible]
19	19	23	21	22	21	22	22	19	20	18	16	
[illegible]	125	131	128	128	128	120	125	195	201	201	198	
179	168	168	163	163	164	153	149	138	138	139	136	
77	77	178	175	179	167	176	328	182	180	182	310	
6	7	7	5	6	7	8	8	5	5	5	4	
243	246	248	569	268	260	233	[illegible]	308	311	302	316	
17	23	21	37	36	46	52	34	10	10	11	[illegible]	
3	3	3	3	3	3	3	4	3	3	3	4	
527	524	625	652	655	647	625	744	646	647	642	813	
30	30	31	33	29	31	31	28	29	28	[illegible]	[illegible]	
3	5	4	6	9	9	23	10	6	6	5	4	
23	24	26	25	22	21	25	35	24	26	[illegible]	24	
22	27	31	31	33	33	30	26	21	20	26	19	
71	60	53	55	52	56	[illegible]	[illegible]	[illegible]	41	43	42	
49	5[illegible]	46	47	43	41	37	41	34	31	33	34	
15	17	16	16	14	14	12	11	4	4	4	5	
14	10	18	15	15	15	13	12	6	6	6	8	
130	138	148	145	127	133	[illegible]	[illegible]	153	147	165	187	
20	20	24	35	30	32	33	29	7	8	6	9	
36	43	44	42	43	43	43	39	22	21	25	32	

Number of State Banks

	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887
Tex.	12	11	10	10	10	14	19	19	17	18	18
Fla.	8	9	8	8	7	9	9	17	19	10	27
Total	289	314	315	309	335	388	409	428	456	414	433
Ohio	219	235	225	227	231	~~226~~ 234	~~225~~ 237	~~234~~ 243	~~2[illegible]~~ 259	~~[illegible]~~ 238	243 239
Indiana	111	119	118	113	114	122	134	135	126	124	149
Illinois	282	295	305	321	331	337	374	394	394	405	432
Michigan	131	140	138	140	151	157	174	184	192	197	217
Wisconsin	90	95	73	80	88	94	97	103	104	107	124
Minnesota	49	51	58	60	89	95	124	129	129	137	145
Iowa	201	232	252	264	289	380	353	373	383	388	411
Missouri	104	107	105	83	94	96	97	128	111	132	129
Totals	1169	1254	1274	1308	1387	1517	1590	1689	1678	1738	1840
N. Dakota	8	10	10	10	31	48	97	136	140	162	183
S. Dakota											
Nebraska	20	26	43	60	92	113	140	1[illegible]7	185	229	278
Kansas	84	75	90	108	137	160	194	211	249	303	353
Montana	5	7	6	8	11	12	17	15	14	12	10
Wyoming	5	6	5	5	5	5	9	9	9	9	12
Colorado	25	23	22	25	50	49	57	47	43	53	65

States in each [illegible] 18[illegible]-1899

1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	[illegible]	[illegible]
[illegible]	30	27	22	19	19	15	18	11	12	14	14
27	24	23	19	20	22	22	19	11	12	13	11
400	474	440	44[illegible]	[illegible]	469	464	450	368	365	399	416
250	254	264	271	263	265	253	245	262	260	268	287
238	243	250	254	264	271	263	265	253	245	262	260
156	170	177	181	187	1[illegible]	1[illegible]	[illegible]	204	209	213	222
441	455	449	511	535	548	541	540	567	560	562	599
225	228	232	227	[illegible]	[illegible]	[illegible]	218	236	235	241	249
102	119	110	104	110	110	100	108	106	104	111	120
152	163	172	182	166	175	177	175	204	205	214	239
453	456	485	482	498	474	460	[illegible]	[illegible]	[illegible]	490	519
125	141	152	143	134	139	131	130	114	107	107	110
1946	1986	2041	2101	2085	2132	2063	2060	2170	2157	2286	2345
146	205	62	38	30	19	14	14	0	0	1	2
		146	127	66	64	58	48	48	47	52	57
306	297	244	192	165	155	143	132	81	79	74	65
365	343	327	253	208	190	171	148	113	118	96	87
11	15	16	22	19	19	14	16	18	17	17	21
12	10	10	11	4	4	8	4	8	7	12	12
59	73	70	58	56	58	44	50	52	50	48	50

Number of Private Banks by

	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887
w Mexico	4	5	5	7	10	13	20	16	13	[illegible]	[illegible]
Oklahoma.											
Total	161	162	181	223	336	400	528	581	661	780	911
Washington	5	4	3	2	8	14	11	10	10	11	11
Oregon	6	7	7	8	9	14	16	21	22	21	22
California	65	72	48	39	41	49	51	47	46	50	48
	~~55~~	~~37~~	~~45~~	~~32~~	~~35~~	~~32~~	~~35~~	~~28~~	~~35~~	~~31~~	~~27~~
Idaho	3	3	4	5	4	8	11	13	11	13	16
Utah	7	7	8	9	9	11	12	11	9	8	8
Nevada	18	16	13	13	7	11	10	13	11	13	11
Arizona	1	2	2	2	2	4	7	2	4	4	4
Total	102	111	85	78	80	111	118	117	113	120	120
Total for United States	2432	2586	2543	2595	2799	3107	3313	3458	3525	3699	395[illegible]

States in each Year 1877-1899.

1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899
10	9	9	8	4	5	4	4	5	5	5	7
					11	23	19	21	20	4	1
969	952	884	709	527	531	479	446	346	350	309	304
14	34	36	35	35	31	?	[illegible]	15	17	19	24
21	25	22	24	24	26	30	17	13	15	16	30
52	55	37	43	32	35	32	35	28	30	31	29
16	13	11	13	12	12	10	15	11	11	13	9
[illegible]	9	13	21	11 ~~6~~	11 ~~5~~	10 ~~7~~	12 ~~6~~	13 ~~3~~	13 ~~3~~	13 ~~3~~	11 ~~2~~
10	8	6	7	6	5	7	6	3	3	3	2
[illegible]	5	3	3	4	5	5	3			1	
115	149	128	149	124	128	93	105	83	89	96	95
4037	4215	4305	4547 ~~4452~~	3974	4055	3847	3930	3555	3809	3933	4168

VITA.

George Ernest Barnett was born at Cambridge, Md., Nov. 19, 1873. He entered Randolph-Macon College in September, 1888, and received the degree of A. B. in June, 1891. In the same year, he became Principal of Mocksville Academy at Mocksville, N. C., remaining in this position six years. In October, 1897, he entered Johns Hopkins University as a graduate student, taking Economics as his major study, and History and Politics as his first and second subordinates, respectively.

In 1897 - 1898 and 1898 - 1899, he held North Carolina Scholarships, and in 1899 - 1900, was Fellow in Economics, but in March, 1900, resigned the fellowship to become Assistant. He was appointed Fellow in June, 1900, but did not enter on the fellowship, being reappointed Assistant in Economics in October, 1900.